Professional Standards Authority for Health and Social Care v Health and Care Professions Council, Roberts [2020] EWHC 1906 (Admin) concludes that racist language is incompatible with professional practice or is it?

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There are some cases where, on the face of it, the outcome may appear to be obvious. In *Professional Standards Authority for Health and Social Care v Health and Care Professions Council, Roberts* [2020] EWHC 1906 (Admin), the PSA took that very view. However as the PSA learnt every case must be judged and evaluated on its own merits.

Mr Roberts was a senior paramedic with the East of England Ambulance Service. Whilst working in that capacity, he attended a patient with a student paramedic following a 999 call in a rapid response vehicle. In the course of that visit, he attempted to communicate with the patient who refused to co-operate with the process of helping him even though his vital signs suggested that he was fully conscious. A decision was made to transport the patient to hospital. During the course of the hand over, Mr Roberts described the patient's approach using a derogatory acronym to his fellow paramedics by stating 'Have you guys heard of the term 'DPS'?'. He explained the term 'DPS' and confirmed that it related to Asian people. By using the term 'DPS', Mr Roberts had meant 'dying Paki syndrome'. The incident was reported to the Trust that employed him.

Mr Roberts was brought before the HCPC where he admitted all charges in relation to the incident including that his comments were racist and that they constituted misconduct. However, he did not accept that he was impaired. Although the Panel concluded that the use of the abbreviation 'DPS' in relation to a patient was serious conduct that fell far below the standards expected of a registered professional, it concluded that the Registrant's fitness to practise was not impaired. As a result, there was no power to impose a sanction.

The Panel was satisfied that the registrant had reflected upon his use of the racist term, had self-referred himself to the Regulator, had undertaken voluntary learning and had, since the

incident, intervened when witnessing inappropriate racist behaviour by a member of the public toward a fellow professional. The Panel therefore concluded that the risk of the conduct being repeated was remote and that this was an isolated incident. When applying the public component of impairment, the Panel concluded that despite the misconduct being deplorable, it was of the view that in the particular circumstances of the case, the need to maintain public confidence and uphold proper standards would not be undermined if a finding of impairment was not made.

The PSA referred the decision to the High Court under s.29(1)(j) of the National Health Service Reform and Healthcare Professions Act 2002 (as amended) on the grounds that the Panel's decision was appealably wrong. In essence the dispute between the parties centred on the approach of the Panel to the public interest in upholding and declaring standards.

Mrs Justice Foster concluded that the Panel's decision was not wrong and had been reached on the basis of a correct understanding of the legal principles and a careful weighing of the considerations. Of note, the Court recognised that in health care regulation there could be cases where a single instance of grave conduct would require a finding of impairment or even a sanction where removal from the register was necessary. However that this was an exercise of evaluation and judgment. In evaluating the facts of the present case the Court was satisfied that the Panel could properly find that the public interest was served and did not require the finding of impairment.

In conclusion, the High Court made clear at paragraph 61 that: *'it should be said, and should be said clearly, that generally speaking, any conduct of a professional person of a racist nature is likely to result in a finding of impaired fitness to practise. However, there is no rule that such a result must follow. The very fact that it did not in the current case does not mean, as I have stated, that this Panel's views must be characterised as unlawful…'*

It should be noted that in general Professional Conduct Committees will not treat racially-offensive language and attitudes kindly. In the words of Mrs Justice Forster such *'an attitude…is wholly incompatible with professional practice… Where there is a matter as delicate and abhorrent as a racial slur, it will be rare that anyone who allows themselves to trespass into this repugnant territory will not be considered impaired going forward.*' However Mr Robert's case was different and very unusual. This is a stark reminder that each case is fact sensitive.

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