3rd July 2019

PRESS SUMMARY

***The Queen (on the application of NGOLE) (Appellant) v The University of Sheffield (Respondent)* [2019] EWCA Civ 1127**
On Appeal from [2017] EWHC 2669 (Admin)

LORD JUSTICES: Lord Justice Irwin, Lord Justice Haddon-Cave, Sir Jack Beatson

BACKGROUND TO THE APPEAL
This case concerns the expression of religious views, on a public social media platform, disapproving of same sex marriage and homosexual acts, by Felix Ngole (the Appellant), a student enrolled on a two-year MA Social Work course at the University of Sheffield (the University).

In the course of a discussion on Facebook about a prominent story on an American news website (MSNBC) relating to same-sex marriage, the Appellant posted a number of comments, such as "…[S]ame sex marriage is a sin whether we accept it or not", "…Homosexuality is a sin, no matter how you want to dress it up", "…[Homosexuality] is a wicked act and God hates the act", and quoted the Bible.

These posts were brought anonymously to the attention of the University by another student. The University thereupon instituted disciplinary proceedings against the Appellant. The University's Fitness to Practice (FTP) Committee found the Appellant in breach of two professional requirements under the Health and Care Professions Council (HCPC)'s code of conduct and guidelines: (a) to keep high standards of professional conduct and (b) to make sure that his behaviour does not damage public confidence in the profession, and took the decision to expel him from his course. The decision was upheld by the University's Appeal Committee.

The Appellant brought judicial review proceedings against the University. The Judge, Rowena Collins Rice, sitting as Deputy High Court Judge, dismissed the claim. The Appellant appealed her decision.

JUDGMENT
The Court of Appeal unanimously allow the appeal.

REASONS FOR JUDGMENT
The Court's conclusions are summarised in paragraph [5] of the judgment. The University's disciplinary proceedings were flawed in a number of respects:

(1) The University adopted a position from the outset of the disciplinary proceedings which was untenable: namely, that <u>any</u> expression of disapproval of same-sex relations (however mildly expressed) on a public social media or other platform which could be traced back to the person making it, was a breach of the professional guidelines. The University's stance was not, however, in accordance with the relevant HCPC professional code and guidelines.

(2) The HCPC professional code and guidelines did not prohibit the use of social media to share personal views and opinions, but simply said that the University might have to take action "if the comments posted were offensive, for example if they were racist or sexually explicit".

(3) The Appellant immediately reacted (to what he saw as an unwarranted blanket ban by the University on him expressing his religious views in any public forum) by himself adopting a position which was equally untenable: namely, that the University had no business in interfering with his freedom of expression and it was his right to express his religious views and he would continue to do so just as before, whatever the disciplinary consequences. The Appellant's reaction, whilst perhaps understandable, was also not in accordance with the relevant HCPC professional code and guidelines.

(4) The right to freedom of expression is not an unqualified right: professional bodies and organisations are entitled to place reasonable and proportionate restrictions on those subject to their professional codes; and, just because a belief is said to be a religious belief, does not give a person subject to professional regulation the right to express such beliefs in any way he or she sees fit.

(5) It will be apparent, therefore, that both sides adopted extreme and polarised positions from the outset, which meant that the disciplinary proceedings got off on the wrong track.

(6) At no stage, did the University make it clear to the Appellant that it was the manner and language in which he had expressed his views that was the real problem, and in particular that his use of Biblical terms such as 'wicked' and 'abomination' was liable to be understood by many users of social services as extreme and offensive. Further, at no stage did the University discuss or give the Appellant any guidance as to how he might more appropriately express his religious views in a public forum, or make it clear that his theological views about homosexuality were no bar to his practising as a social worker, provided those views did not affect his work or mean he would or could discriminate.

(7) The University quickly formed the view that the Appellant had become "extremely entrenched" and that he lacked "insight" into the effect that his actions in posting his views on social media would have. This led the University rapidly to conclude that a mere warning was insufficient and that the Appellant's fitness to practice was irredeemably impaired and, therefore, only the extreme sanction of suspension from his course was appropriate.

(8) The University failed to appreciate two matters. First, failing to appreciate that the Appellant's apparent intransigence was an understandable reaction by a student to being told something that he found incomprehensible, namely that he could never express his deeply held religious views in any manner on any public forum. Second, failing to appreciate that a blanket ban on the expression of views was

not in accordance with the relevant HCPC professional code or guidance. In these senses, it was the University and its processes which could be said to lack insight.

(9) It was, in fact, the University itself which became entrenched. First, by failing even to explore the possibility of finding middle ground, despite this being suggested by Pastor Omooba, who accompanied the Appellant at the disciplinary proceedings. Second, by unfairly putting the onus entirely upon the Appellant to demonstrate that he did have "insight" and could mend his ways.

(10) The University wrongly confused the expression of religious views with the notion of discrimination. The mere expression of views on theological grounds (*e.g.* that 'homosexuality is a sin') does not necessarily connote that the person expressing such views will discriminate on such grounds. In the present case, there was positive evidence to suggest that the Appellant had never discriminated on such grounds in the past and was not likely to do so in the future (because, as he explained, the Bible prohibited him from discriminating against anybody).

(11) The University gave different and confusing reasons for suspending the Appellant. Initially, it was said (by the Fitness to Practice Committee) that he lacked "insight" into how his NBC postings might affect his ability to carry out "his role as a social worker"; and subsequently it was said (by the Appeals Committee) that he lacked "insight" into how his NBC postings "may negatively affect the public's view of the social work profession". Further, at no stage during the process or the hearings did the University properly put either concern as to perception to the Appellant during the hearings.

(12) The University's approach to sanction was, in any event, disproportionate: instead of exploring and imposing a lesser penalty, such as a warning, the University imposed the extreme penalty of dismissing the Appellant from his course, which was inappropriate in all the circumstances.

The judge's judgment was premised on an incorrect finding that the University was not suggesting a blanket ban of the sort now in question. The disciplinary proceedings were flawed and unfair to the Appellant. The fundamental fault for the unfortunate course which the disciplinary proceedings took lay with the University. [145]

The Court cannot finally determine whether the Appellant would have resisted the possibility of tempering the expression of his views or would have refused to accept guidance which would resolve the problem. This requires new findings of fact. This case should, therefore, be remitted for a new hearing before a differently constituted FTP Panel. [146]

References in the square brackets are to paragraphs in the Judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at:
https://www.judiciary.uk/judgments/