



Chartered Institute of Environment Health Fitness to Practise Panel

Hearing held on 10 July 2019 at 15 Hatfields, London SE1
8DJ

Determination

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| Member: | Daniel Russell |
| Grade of membership: | Member |
| Panel members: | Naila Aziz (lay member) Andrew Baum (Chair, lay member) Andrew Walker (CIEH member) |
| Panel Secretary and advisor: | Andrew Harvey |
| Mr Russell: | Present, not represented |
| Chief Executive, CIEH: | Represented by Jon Buttolph |
| Outcome: | Allegation proven |
| Sanction: | Termination of membership |

Details of allegations

It is alleged that Daniel Russell (a member of CIEH):

1 - posted racist content on the Facebook page of the Lancashire Evening Telegraph, on or before 28 March 2019

and that, in light of the above, his fitness to practise is impaired by reason of misconduct.

Order under Rule 10.6 (for all or part of hearing to be held in private)

During the course of the hearing, the Panel became aware that proper consideration of the evidence in this case, involved matters related to the health of Mr Russell and of third parties.

Of its own volition, the Panel determined that such matters would be heard in private and would not appear in any published version of a determination of this hearing.

Background

A member of the public e-mailed CIEH's Contact Centre on 28 March 2019, alleging that Mr Russell had posted racist content on the Facebook page of the Lancashire Evening Telegraph. The Complainant asked that CIEH investigate this matter and provided an internet link to the content concerned.

Subsequently he provided screen shots of relevant content.

The matter was referred to CIEH's Screener who determined (on 15 April 2019) that there was a case to answer and directed that this matter should be referred to a Fitness to Practise Hearing.

Notice of today's hearing was served on Mr Russell on 13 May 2019. In that notice, CIEH set out its position that the following elements of the Code of Conduct were engaged, if the facts alleged were found to be proven:

Members shall -

Maintain their integrity and justify the trust the public, employer and colleagues have in them and the profession.

Avoid conduct that could affect or undermine the confidence placed in them, the CIEH and the environmental health profession.

Treat everyone equally regardless of their gender, race, nationality or ethnicity, disability, age, sexual orientation, transgendered status, religion or belief, marital or civil partnership status.

Recognise the differences between individuals and groups and avoid stereotyping.

CIEH alleges that such conduct, if proved, would constitute misconduct.

Evidence submitted

In opening submissions, Mr Buttolph outlined the background to this case including how CIEH became aware of the matters alleged, the reference to (and decisions by) the Screener and the putting of those matters to Mr Russell. He explained that Mr Russell had provided further information at that stage. Mr Russell had asked CIEH to secure the attendance of the Complainant as a witness, although that had proved not to be possible.

Mr Buttolph drew the panel's attention to the elements of the Code which CIEH submitted are engaged by the matter referred by the Complainant.

In answer to a question from the Panel, Mr Buttolph took the Panel to those Facebook posts included in the evidence submitted which CIEH alleges constitute racist material. He drew the Panel's attention to the fact that others were engaged in this online conversation, submitting that Mr Russell instigated the conversation itself. He outlined the areas of the Code that, in his submission, were engaged by these charges.

Mr Russell asked Mr Buttolph to explain what verification checks, if any, had been undertaken by CIEH in respect of the e-mail of complaint. He confirmed that none had been undertaken, although he confirmed that the link that had been submitted had been checked to ensure its veracity.

After a break to allow it to formulate questions, the Panel asked further questions of the evidence presented by Mr Buttolph to assist it in understanding the facts in this case.

The Panel asked Mr Buttolph to particularise which elements of the evidence presented on the part of CIEH it said were racist and constituted misconduct.

In Mr Buttolph's submission, offensive references to Sharia law were racist in that that system of law was associated with parts of Islam as were the suggestion that criminal activity was associated with a particular religion or belief and that people of particular religions did not follow UK law.

He further submitted that stereotyping of Mr Russell's former hometown, and of a number of other locations, engaged the code. Mr Buttolph submitted that starting on the basis that somewhere is a 'shithole' is not

conducive to the sort of community-based work that an environmental health professional is called upon to perform as part of their duties.

He submitted that references to young Asians (including that they were criminal) were stereotyping on both the basis of age and race, that references to 'kissing someone's camel tonight' were racist and that reference to areas of Blackburn being 'a lawless dump' constituted ethnic stereotyping.

Mr Buttolph was asked if any actual offence was caused by the material submitted. He submitted that the Complainant was offended by the comments that he said had been made and that that was the reason for his making of the complaint.

Mr Buttolph was asked, further, if he thought comments made by the Complainant (in the course of the online conversation) were offensive or inappropriate. He submitted that that may be the case but that, in his opinion, that was a matter appropriate for consideration at the sanction stage if that were reached – rather than the Panel's finding of fact.

The Panel asked Mr Buttolph if the credibility of the Complainant was relevant to this matter and, similarly, if **[PRIVATE]** were relevant. Mr Buttolph submitted that, in the view of CIEH, these may be relevant at sanction but not in the consideration of facts.

Mr Buttolph further submitted that the fact that Mr Russell did not mention his role or his membership of CIEH were not relevant to the matters as charged.

Mr Buttolph closed the case for CIEH.

Mr Russell opened by apologising for the fact that his actions had led to this hearing come about. He submitted that the initial comment in the online conversation had been made by him, not by a third party. He apologised to the Panel for the language he had used and that this was not reflective of his normal style of conduct.

He explained that his reference to Sharia Law was not appropriate and that he has since enquired more about that matter in order to help develop his understanding. Mr Russell further submitted that comments were only able to be posted on a photograph that he himself had uploaded to Facebook, as he had set it to be publicly available.

Mr Russell submitted that he worked with Asians on a daily basis in his current and previous roles and that he would struggle to do the job he did if he behaved in a racist manner. He made references to incidents in his hometown which, in his submission, were 'a bit of a problem with young Asians'.

Mr Russell further submitted that supportive comments made by friends of his on the Facebook exchange demonstrated that he was not a racist. Mr

Russell explained that some of the comments made by him were in response to offensive posts that related to **[PRIVATE]** and his Daughter.

Mr Russell explained that, in his submission, this was not the first occasion on which the Complainant had made allegations of this nature in respect of him. He submitted that his view was that the evidence presented by the Complainant was arranged in such a way so as to not give a clear picture of the online exchange.

Mr Russell submitted that he made no reference to Muslims or terrorist attacks despite this having been alleged by the Complainant online. He submitted that he had let himself down by the comments he had made and the language that he had used.

He further submitted that the Complainant had gone to a great deal of effort to find Mr Russell and that this behaviour was part of a pattern which he had encountered in other parts of his life away from the current proceedings. He questioned the motivation of the Complainant in raising these matters with CIEH.

He further submitted that the comments made in respect of his own Mother and Daughter had had personal impact on him, his ex-partner and his Mother.

Mr Russell told the Panel that he had not been subject to any other regulatory proceedings at CIEH.

The Panel asked questions of Mr Russell. It enquired what the work was that he carried out in respect of property inspection reports for immigration-related matters. He submitted that he carried out such work across the North West of England for a wide range of clients, of many nationalities. At least 50% of his work was for clients with an Asian background; much of his work was obtained by references and referrals from other clients.

In his submission Mr Russell accepted that his initial post in the online conversation led to the making of racist comments by other parties. He further submitted that his comments had not been moderated by the 'owner' of the Facebook page in question.

Mr Russell was asked what he meant by a post he had made in which he said, "Now pipe down, your cousin is waiting for you to come to bed.". He said that he could not explain what he meant by this. He submitted that he was angry and was simply trying to be unpleasant to the poster, Imran Ali. He was asked to explain what he meant by a reference to 'six fingers' in one post; he submitted that this was an oft used phrase between people from Blackburn and people from Burnley which had its origins in football rivalry.

Mr Russell was asked if his comment in the online conversation, "At no point have I referred to Asians as mongers, just dickheads like you with a chip on your shoulder." was racist. He said that it was not and was simply

a response to comments made by others. He apologised for the language he used. He further submitted that he did not know who Scott Ainscough and Imran Ali (both of whom had engaged in making comments) were, despite having attempted to trace them. He submitted that he had never behaved in a racist manner.

In his submissions, Mr Russell accepted that describing his former hometown as a 'shithole' was something that he should not have done. When asked if this were a racist comment, he submitted that it was not intended to be racist.

He said that he was now not clear, generally, what language he was permitted to use.

Mr Russell initially submitted that his comments about young Asian men involved in an incident could be regarded as racist. Subsequently, he submitted that this was not the case.

He went on to submit that his comments about two particular areas (Mill Hill and Shad) were not racist. They were areas where there was much crime but, largely, the population was white.

Mr Russell said that his references to a camel in Saudi Arabia were not, in his submission, racist.

He further submitted that his references to Blackburn were not ethnic stereotyping and not focussed on any particular community. He submitted that it was difficult to appreciate these matters unless one had lived in a community such as Blackburn which was divided in many respects.

The Panel invited closing submissions from each party.

Mr Buttolph submitted that the elements of the evidence adduced might amount to some mitigation.

He submitted, in particular, that the specifically reference to Sharia Law and the reference to a camel were clearly racist. People reading these comments were much wider than Mr Russell had submitted – for example by others in the North West, people resident in the Middle East, people in London and the Panel itself.

Mr Buttolph was asked if Mr Russell's conduct constituted misconduct. In his submission, the elements of the Code previously cited in his earlier submission were engaged and breach of them was indicative of misconduct. At best, in his submission, this was appalling judgement. He went on to submit that, even in the language used in this hearing, Mr Russell had used racist language – for example by making distinct references to English people and Asian people. He said that, overall, there was an over-arching issue of poor judgement in respect of Mr Russell's starting and continuation of the online debate and that this poor

judgement gave rise to a concern about Mr Russell's capacity to behave in a professional manner.

Mr Russell submitted that CIEH's submissions amounted to a character assassination. He submitted that the comments that he made in the online conversation were poorly judged, although that some of those were made during the period when he was **[PRIVATE]**.

He submitted that CIEH was trying to make an example of him, given what he described as 'the current climate'. He had made a mistake but that there was some mitigation in respect of some of the comments that he had made. He thought that his career was at risk given that CIEH has chosen to bring these proceedings 'in the current environment'.

Decisions on facts and misconduct

The Panel was aware that the appropriate test in these proceedings was the balance of probabilities (often known as the civil standard) and that the burden of proof was on CIEH.

The Panel first considered the overall credibility of the one witness from whom it heard live evidence, Mr Russell.

The Panel considered that, in its opinion, Mr Russell was an honest and straightforward witness who did his best to assist the Panel. He was prepared to admit, frankly, those matters which he said he admitted and was able to give the Panel helpful background.

The Panel went on to consider the single allegation namely that Mr Russell posted racist content on the Facebook page of the Lancashire Evening Telegraph, on or before 28 March 2019 and that, in light of the above, his fitness to practise is impaired by reason of misconduct. It noted that the charge was specifically drafted to focus on racist material and that, therefore, the Panel was restricted to focussing only on this area of the evidence before it.

In reaching its decision on facts, the Panel considered all the documentary evidence adduced by Mr Buttolph and Mr Russell as well as the oral submissions of both parties.

The alleged fact is found proved, in respect of some of comments made by Mr Russell in the online conversations that it considered.

The Panel considered carefully the submissions from both parties in respect of Mr Russell's posts about Sharia Law.

In his own posts, the Panel found that he made the connection between Sharia Law and matters of race himself, including references to Asians attacking each other with weapons. It noted that Mr Russell had started this conversation and that he was aware of the context in which his

comments would be read. He proactively engaged in the online debate. The Panel considered these comments racist.

The Panel considered that the comments made in respect of certain areas of Lancashire whilst exhibiting poor judgement, were not racist.

In respect of Mr Russell's comments about 'these young Asians who all seem to have a chip on their shoulder.', the Panel determined that this was not of itself racist, although again it exhibited poor judgement.

The Panel considered the references that Mr Russell had made to camels when taken in the context of his immediately previous comment about a 'dickhead that uses his car to run others over. One of yours I believe.', was racist.

The Panel concluded that references to 'scum killing scum' were not racist.

Further, the Panel considered that Mr Russell had referred to all Asians as dickheads and that this conduct was racist.

Having considered the facts found proved in this case, the Panel concluded that Mr Russell's actions did constitute misconduct. It defined misconduct as behaviour that falls short of what can reasonably be considered of a professional.

It considered that each of the elements of the Code cited by CIEH were engaged by Mr Russell's actions:

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Maintain their integrity and justify the trust the public, employer and colleagues have in them and the profession.

Avoid conduct that could affect or undermine the confidence placed in them, the CIEH and the environmental health profession.

Treat everyone equally regardless of their gender, race, nationality or ethnicity, disability, age, sexual orientation, transgendered status, religion or belief, marital or civil partnership status.

Recognise the differences between individuals and groups and avoid stereotyping.

Decision on impairment of fitness to practise and reasons

The Panel determined that Mr Russell's practise as a CIEH member was impaired.

It was aware that there was no statutory definition of impairment and the Panel used its own professional judgement in reaching a decision.

Mr Buttolph submitted that the actions found proved by the Panel constituted professional misconduct. He reminded the Panel that Mr Russell had chosen to be a member of CIEH and that he should be bound by its rules. It was his further submission that Mr Russell's membership should be terminated.

Mr Russell submitted that he was surprised that CIEH was seeking to end his career by these proceedings. His employment was a means of supporting his daughter and himself. He considered that his comments were not overly racist. He thought it inappropriate that other parties had insulted his mother and called him a cunt, but that he was the party being held to account. He submitted that CIEH was attempting to make an example of him and throw his career away.

The Panel found impairment on public interest grounds.

Whilst not binding on the Panel, in any manner, it found it helpful to consider the observations of Mrs Justice Cox [in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in which is cited the approach of Dame Janet Smith in the fifth Shipman Enquiry], often used in fitness to practise proceedings.

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he: a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

The Panel considered that the test in respect of bringing the profession into disrepute was engaged in this case.

The Panel further considered that Mr Russell's behaviour had brought the profession into disrepute and that an ordinary member of the public, or of the profession, would be appalled by the finding of racist behaviour by a member of CIEH.

It was concerned by what it saw as a lack of insight on the part of Mr Russell, demonstrated in his submissions to the Panel.

Decision on sanction and reasons

The Panel considered the submissions of Mr Buttolph and Mr Russell in respect of sanctions.

Mr Buttolph submitted any mitigation in respect of provocation only applied to the later posts as did, in his view, **[PRIVATE]**.

In reaching its decision, the Panel took account of the need to uphold proper standards for the environmental health profession, mark the public interest in this case and maintain confidence both in the profession and in CIEH and its fitness to practise procedures.

The Panel considered the range of sanctions available to it, starting at the least severe.

The Panel considered taking no further action in this case but noted that the rules provided that a panel could only take this action in the event that fitness to practise was not currently impaired. Accordingly, this was not a sanction available to the Panel in the particular circumstances of this case, given that it had determined that Mr Russell's fitness to practise was currently impaired.

The Panel then considered reprimanding Mr Russell and the giving of advice as to future conduct but determined that this was not a sufficient outcome, given the serious nature of its findings of fact.

The Panel went on to consider transferring Mr Russell to another grade of membership. However, it noted that this was not a case where the facts related directly to professional practice and, in the particular circumstances of this matter, determined that this was neither an appropriate nor cogent sanction. It determined that the removal of any membership privilege was, equally, neither appropriate nor cogent.

Finally, the Panel went on to consider terminating Mr Russell's membership of CIEH. It considered that this was the appropriate sanction given its very serious findings of fact. Whilst it acknowledged that this sanction would, potentially, have an adverse impact on Mr Russell, the public interest in this case outweighed his personal interests. This was the only sanction available which, in the view of the Panel, marked the seriousness of the matters found charged.

Right of appeal

The Panel noted the provisions in CIEH's Fitness to Practise rules for Mr Russell to appeal its decision on any of the grounds outlined in Rule 13.1.

It also noted the provisions of Rule 1.4 in respect of the publication of determinations.

Accordingly, the Panel directed that this determination may not be published, in any form by any party, until after the notice period for an appeal has expired.

That concludes this determination.