

Section 29 Case Meeting

28 September 2022

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Rebecca Senior, Lawyer, Professional Standards Authority
David Martin, Concerns and Appointments officer, Professional Standards Authority

In attendance

Samantha Jones of counsel, 39 Essex Chambers

Observers

Remi Gberbo, Lawyer, Professional Standards Authority
Richard West, Scrutiny Officer, Professional Standards Authority
Archie Herrick, Policy Officer, Professional Standards Authority
Georgina Devoy, Senior Scrutiny Officer, Professional Standards Authority

1. Definitions

1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

2. Purpose of this note

2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

3. The Authority's powers of referral under Section 29 of the Act

3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.

3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:

- to protect the health, safety and well-being of the public
- to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*¹).

4. Conflicts of interest

4.1 The Members did not have any conflicts of interest.

5. Jurisdiction

5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 30 September 2022.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on [REDACTED].

6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated [REDACTED]
- The Authority's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 25 September 2022
- SWE's Code
- SWE's Indicative Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from Social Work England to the Authority's Notification of s.29 Meeting.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

8. Background

- 8.1 The Registrant was employed as a Senior Social Worker in the MASH (Multi-Agency Safeguarding Hub) team, for [REDACTED] Borough Council, until her dismissal in [REDACTED]
- 8.2 MASH was part of a single gateway for multi-agency information sharing in [REDACTED] Children's Services, designed to ensure that child protection and safeguarding concerns were prioritised and information from different sources was co-ordinated.
- 8.3 Under the procedures established by MASH, information received would first be reviewed by an administrative team to establish that it related to a child and whether the child (or related adult) was known to Children's Services. The referral would be sent to a single point of access email address for screening by one of the MASH Managers, who would record next steps and then allocate the matter to one of the 11 Senior Social Workers in the team with responsibility for progressing the concerns. The allocated Social Worker was required to ensure that a contact record detailing the concern, any multi-agency checks carried out and record any recommended next steps and refer this to the MASH manager for approval.
- 8.4 Referrals were required to be actioned by the end of the next working day.
- 8.5 Concerns were raised by the Registrant's employer that information emailed directly to the Registrant had not been actioned within the required time frame and/or had been deleted, telephone referrals from the public or other agencies had not been recorded at all on worksheets and/or had not been actioned in accordance with the established procedures.
- 8.6 Additionally, prior to going on leave, the Registrant had confirmed to her line manager that all outstanding work and her worksheet was up to date, with records of all work assigned having been progressed. It subsequently transpired that there was a wide range of emails that had not been progressed, the extent of the MARF ('Multi-Agency Referral Forms') referrals not actioned was described as 'alarmingly high'.
- 8.7 The Allegation brought against the Registrant was as follows:
'While registered as a social worker in [REDACTED] Multi-Agency Safeguarding Team, between [REDACTED] you failed to progress at least seven referrals allocated to you, either quickly enough or at all, leaving children at risk of harm.'
- 8.8 The Registrant was present but not represented at the hearing and made admissions to the allegation.
- 8.9 The Panel found the allegation proved. It considered that the proven finding amounted to misconduct and that the Registrant's fitness to practise was currently impaired on both public protection and public interest grounds. It imposed a conditions of practice order for 18 months.

9. Applying Section 29 of the 2002 Act

9.1 The Members considered all the documents before them and received legal advice.

9.2 The Members discussed the following concerns about the decision:

Under prosecution

9.3 The Members considered whether Social Work England's ('SWE') investigation was flawed and whether all relevant information was put before the Panel.

9.4 The Members were concerned that SWE had not properly investigated further potential failures by the Registrant in deleting and/or leaving unread 10 MARF's, such that they were left unactioned.

9.5 The Members were also concerned that SWE had not obtained evidence in relation to 77 referrals which had been assigned to the Registrant and not progressed. The evidence indicated that this included several emails that the Registrant had deleted without taking any action.

9.6 The Members also noted that the Registrant informed her managers that she had no outstanding work before going on leave when this was not the case. This was not captured in the allegations.

9.7 The Members noted that matters in the 77 referrals arose out of the same conduct that formed the basis of the allegation. The Members were concerned that no apparent investigation into the additional 77 referrals had taken place.

9.8 The Members were concerned that the unactioned MARF's and referrals not covered by the allegation had the potential to expose a far greater number of children to a serious risk of harm than the seven cases pursued by SWE. The Members were concerned that that this meant that the case against the Registrant was potentially far more serious than appeared.

9.9 The Members were also concerned that failing to progress 77 referrals in a two-month time frame could be indicative of an attitudinal problem which may be harder to remedy.

9.10 The Members were concerned that SWE did not ask appropriate questions during the investigation stage in relation to the other matters not charged. The Members did not agree with the response from SWE that it would have been disproportionate to bring additional allegations.

9.11 As noted above, the Members were concerned that these additional matters were serious and had the potential to cause harm as they did not appear to be adequately investigated, the Members were concerned that the true gravity of the situation was not evident to SWE or the Panel.

9.12 The Members were further concerned that the failure to progress 77 referrals took place in a relatively short period of time. The Registrant had only been employed for 2 months when these issues arose. The Members considered that this may be indicative of a more serious problem (such as an attitudinal issue) and were not satisfied that the Panel had properly grappled with this.

- 9.13 The Members concluded that without investigating the 77 referrals and 10 MARF's they could not be assured that the overall decision made by the Panel was sufficient.
- 9.14 The Members took the view that the additional matters should have been investigated and alleged and the failure to do so amounted to a serious procedural irregularity.

Did the Panel fail to act as a Panel of enquiry?

- 9.15 The Members were concerned that the Panel had failed to act as a panel of enquiry.
- 9.16 Given the seriousness of the seven cases that formed the allegations, the Members considered that it was incumbent upon the Panel to ask SWE to obtain further evidence about the 10 unactioned MARF's and 77 referrals and include additional allegations where appropriate.
- 9.17 The Members considered that the Panel ought to have done this even if SWE considered the matters in the 77 referrals to be similar to the seven already contained within the allegation. The Members considered that the Panel had no way of assuring itself that all the concerns in the case were being addressed as the information had not been obtained.
- 9.18 Without investigating this aspect of the case the Members concluded that SWE had failed to capture the gravity and extent of the concerns. The Panel should have been alive to this and should have intervened to ensure the case was properly presented.
- 9.19 The Members discussed that adjourning the hearing would have allowed this investigation to take place to ensure that the full extent of the concerns was ventilated.

Was the sanction imposed within the reasonable range of outcomes and was it sufficient to protect the public?

- 9.20 The Members firstly considered the sanction on the basis of the allegation found proven. They noted that that the Registrant had been found to lack full insight but had appreciated that she was found to be remorseful, recognised her failings and had expressed a willingness to comply with any conditions imposed on her registration.
- 9.21 The Members further noted that the conditions in place included a supervisory requirement which could provide an element of public protection.
- 9.22 However, due to the serious procedural irregularities which arose in relation to the deficiency of the allegation and the Panel's failure to enquire, the Members could not conclude that conditions were sufficient for public protection and upholding public confidence and standards.

Conclusion on insufficiency for public protection

- 9.23 In light of their concerns, the Members concluded that the panel's failure to enquire into the additional matters and SWE's failure to bring the full extent of

the concerns to the Panel's attention were a serious procedural irregularity. This meant the Members were unable to determine whether the outcome of the case was insufficient.²

10. Referral to court

- 10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.



Alan Clamp (Chair)

06/10/22

Dated

² *Ruscillo* at [72]

11. Annex A – Definitions

11.1 In this note the following definitions and abbreviations will apply:

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| The Authority | The Professional Standards Authority for Health and Social Care |
| The Panel | A Fitness to Practise Panel of Social Work England |
| The Registrant | |
| The Regulator | Social Work England |
| Regulator's abbreviation | SWE |
| The Act | The National Health Service Reform and Health Care Professions Act 2002 as amended |
| The Members | The Authority as constituted for this Section 29 case meeting |
| The Determination | The Determination of the Panel sitting on |
| The Court | The High Court of Justice of England and Wales |
| The Code | SWE's Code of Practise in force at time of incident |
| The SG | Regulator's Indicative Sanctions Guidance in force at sanction stage |
| MARF's | Multi-agency Referral Forms |