

# Section 29 Case Meeting

13 June 2022

157-197 Buckingham Palace Road, London SW1W 9SP



## *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority

Graham Mockler, Assistant Director of Scrutiny and Quality (performance),  
Professional Standards Authority

David Martin, Concerns and Appointments Officer, Professional Standards Authority

## *In attendance*

Peter Mant of counsel 39 Essex Chambers, Legal Advisor

## *Observers*

Caroline Corby, Chair, Professional Standards Authority

Richard Wright, Scrutiny Officer, Professional Standards Authority

Remi Gberbo, Lawyer, Professional Standards Authority

Rebecca Senior, Lawyer, 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*<sup>1</sup>).

#### **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 17 June 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 15 June 2022
- The Regulator's Code
- The Regulator's Sanctions Guidance
- The Authority's Section 29 Case Meeting Manual

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<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

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.

**8. Background**

8.1 The Registrant was employed as a Social Worker.

8.2 [REDACTED]  
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- 8.8 Allegation 1 was struck out at the outset of the hearing on the basis that it was not adequately particularised, and it would be unfair to the Registrant to continue.
- 8.9 The Panel went on to find misconduct and impairment in relation to allegations 2 and 3 and impairment on health grounds in relation to allegation 4.
- 8.10 An 18-month suspension with review was imposed.

## 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:

### *The Adjudicators were wrong to “strike out” allegation 1*

- 9.3 The Members were concerned that the adjudicators were wrong to strike out the allegation and noted that they had no express power to do so.
- 9.4 The Members accepted that the adjudicators have the power to stay all or part of a case where a fair hearing is impossible, but a stay should be of last resort. In particular the Members referred to the relevant case law: (*R (Johnson and Maggs) v Nursing and Midwifery Council* [2008] EWHC 885 (Admin) at [102]; *McDermott v HCPC* [2017] EWHC 2899 at [19]), which states:
  - (i) firstly, whether the allegations provided sufficient information to enable the Registrant to know, with reasonable clarity, the case she had to meet; and (ii) secondly, if not, whether a stay was the only remedy or whether the Registrant knew enough about the case against her to enable her to prepare a defence.
- 9.5 Further, the Members noted that Social Work England’s Fitness to Practise Rules do not require standalone allegations and agreed that there was sufficient information in charge 1.1 for the registrant to have been aware of the case she had to meet.
- 9.6 The Members did however agree that charges 1.2 and 1.3 may not necessarily provided sufficient information on their own, but when read with the statement of case were satisfied that the registrant would have had sufficient information before her to prepare a case.

- 9.7 The Members agreed that it was wrong to strike out charge 1 and that further steps should have been taken before consideration of a stay of proceedings was considered.

*The Adjudicators should have adjourned to allow Social Work England to particularise the allegations and re-serve the Registrant*

- 9.8 The Members noted there had been an adjournment at the start of the hearing following concerns raised by the adjudicators, however the matter resumed shortly after following Social Work England's case that charge 1 was sufficiently particularised.
- 9.9 The Members were concerned that even if the adjudicators were right in their concerns that it would be unfair to proceed with charge 1, as alleged, that as a panel of enquiry, they should have made a decision to adjourn the matter again so that Social Work England could further particularise the allegations and re-serve the registrant, and should have provided Social Work England with directions as to what it was they wanted, in order to consider charge 1.
- 9.10 The failure to do so led the Members to conclude that the adjudicators had failed in their over-arching objective, to protect the public and to be proactive in making sure that the case before them was properly presented.

*In the alternative, Social Work England's failure to adequately particularise the allegations constituted a serious procedural irregularity and a form of "under prosecution"*

- 9.11 The Members then considered that if the Adjudicators did not err in their approach to the case, then Social Work England had potentially failed to adequately particularise the allegation and that the failure to do so was a serious procedural irregularity and a potential form of under-prosecution.

**Conclusion on insufficiency for public protection**

- 9.12 The Members concluded that the adjudicator's decision to "strike out" charge 1 was insufficient for public protection as there did appear to be sufficient information before them, within the allegations, statement of case and additional evidence, to consider the charge. Striking out the charge did not in the Members' view form a fair hearing.
- 9.13 However, should a court decide that the panel was correct to strike out the charge, the Members were further concerned that the failure to adequately particularise charge 1 was a serious procedural irregularity which meant the Members were unable to determine whether the outcome of the case was insufficient.<sup>2</sup>

**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.

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<sup>2</sup> Ruscillo at [72]

- 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.

A handwritten signature in black ink that reads "Alan Clamp". The signature is written in a cursive, slightly slanted style.

**Alan Clamp (Chair)**

**124/06/22**

**Dated**

## 11. Annex A – Definitions

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

<b>The Authority</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	A Fitness to Practise Panel of Social Work England
<b>The Registrant</b>	[REDACTED]
<b>The Regulator</b>	Social Work England
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The Authority as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on [REDACTED]
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The Code</b>	Regulator’s Code of Practise in force at time
<b>The SG</b>	Regulator’s Sanctions Guidance