

# Virtual Section 29 Case Meeting

6 December 2022

157-197 Buckingham Palace Road, London SW1W 9SP



## ***Members present***

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority  
Simon Wiklund, Head of Legal, Professional Standards Authority  
Rebecca Senior-Carroll, Lawyer, Professional Standards Authority

## ***In attendance***

Fiona Patterson of Counsel, 39 Essex Chambers, Legal Advisor

## ***Observers***

Dami Olatuyi, Accreditation Officer, Professional Standards Authority  
Richard West, 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 9 December 2022.

#### **6. The relevant decision**

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 5 October 2022.

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 5 October 2022
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 26 September 2022 to 5 October 2022
- Counsel's Note dated 25 November 2022
- SWE's hearing Bundle, Exhibits and Registrant's responses
- Case Examiners' Decision
- SWE's Sanctions Guidance – November 2019
- 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 SWE to the Authority's Notification of Section 29 Meeting. The Members considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

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

## 8. Background

- 8.1 The Registrant is a social worker registered with an employment agency during the relevant period.
- 8.2 In 2005, the Registrant had twins - Child A, a girl, and Child B, a boy, by Person A, her then husband. The Registrant and Person A underwent an acrimonious divorce. The children, then aged two, lived with the Registrant who worked full time. After their separation, relations between the Registrant and Person A remained tense and hostile. They made allegations against each other in respect of their care of the children, to various agencies.
- 8.3 Both children appear to have been understandably distressed and unsettled by their parents' behaviour. Child A was especially vulnerable due to poor mental health throughout her childhood and teens.
- 8.4 Between August 2018 and September 2020, a series of investigations by the Local Authority into the Registrant's treatment of the children took place. Each of the investigations appears to have been prompted directly or indirectly by Person A. Child A was subject to a Child in Need Plan. Ultimately, the children were allowed to remain in the Registrant's care. However, the social worker who undertook the investigation between November 2019 and January 2020, concluded that the Registrant had emotionally abused both children and taken an over-dose of tablets in front of them on 4 January 2020, which they found deeply distressing.
- 8.5 This investigation resulted in the Registrant being suspended by the employment agency, through which she had secured employment, in November 2019 and dismissed in January 2020.
- 8.6 In June 2021, the Registrant failed to disclose during an online interview with [REDACTED] City Council that she was subject to fitness to practise proceedings by her regulator. At that time, she had been notified of three pending investigations by Social Work England; a fourth having been closed, with no further action a few days before the interview.
- 8.7 The Registrant appeared unrepresented at the substantive hearing before the Fitness to Practise Committee between 26 September and 5 October 2022. She denied all of the charges of having subjected her children to emotional abuse and/or distress, and having acted dishonestly by failing to disclose at an interview with [REDACTED] City Council, whether she had been/was subject to any fitness to practise proceedings. After hearing evidence from her children's social worker, the children themselves, and witnesses from [REDACTED] City Council, the charges were found proved.
- 8.8 The Registrant gave evidence both in relation to the facts and impairment/sanction. The testimonial evidence from colleagues indicated that she was a competent and committed social worker. There were no other regulatory or other complaints found proved or outstanding.
- 8.9 The Panel found that her fitness to practise was impaired on public interest grounds and issued a five-year warning.

## 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:

### *Health concerns*

9.3 The Members first queried whether there was any under-prosecution by SWE in relation to the absence of allegations regarding impairment by reason of adverse health. The Members were advised that SWE Case Examiners were in receipt of correspondence from the Registrant's GP stating that her suicide attempt was an isolated event. In addition, the Registrant had not tried to use her health as an explanation for her behaviour. The Members therefore concluded that there was insufficient evidence of current impairment by reasons of adverse health, and therefore an absence of such an allegation could not be considered to amount to under-prosecution.

### *Were the Panel's conclusions regarding the Registrant's insight reasonable?*

9.4 The Members discussed the Panel's finding that the Registrant was showing developing insight and that there was a low risk of repetition. The Members noted that the Registrant had made some attempts to remediate. However, they considered there remained some real concerns with her insight. The Members were not sure that the Panel had properly analysed the implications of the Registrant's insight (or lack thereof) when considering the risk of her repeating the behaviour found proved against her.

9.5 The Members were particularly concerned at the content of the Registrant's response to the SWE investigation. The Registrant had commented that the decision to schedule an eight-day hearing were 'a disgrace' and that this would only be understandable if a child had died whilst in her care. The Members agreed with the Panel that this demonstrated a lack of understanding and appreciation of the gravity of the allegations which the Registrant faced.

9.6 In addition, they were concerned at the Registrant's lack of insight regarding the link between her abusive behaviour towards her own children and her social work practice. They considered that it would be usual for such a lack of insight to increase concerns about any risk of repetition and its impact on public protection.

9.7 Further, the Members found the Registrant's decision to allow her children, both of whom were vulnerable, to give evidence "which she knew to be untruthful", to be troubling. They noted the theme throughout the evidence that she appeared to put her own needs above those of others, and agreed with the Panel that these factors demonstrated a significant lack of insight. The Members were therefore perplexed with the contrasting finding of the Panel later in the determination, that her insight was developing, with which the Members wholly disagreed, considering her insight to appear negligible.

9.8 The Members bore in mind that the Panel will have had the advantage of seeing and hearing the Registrant give evidence and were conscious of their own sympathies for an unrepresented Registrant appearing in difficult

circumstances. However, the Members were mindful that in *Doree*<sup>2</sup> an Authority appeal which was dismissed by the Court of Appeal, the Authority had criticised a decision of a panel to impose a caution order on the basis of the Registrant's limited insight. They therefore considered it important to be cautious about trying to reassess the Panel's findings on insight. They acknowledged that the risk of repetition of the same circumstances was low due to the passage of time. However, they also acknowledged that the assessment of risk of repetition should involve repetition of similar misconduct or behaviour, not necessarily repetition involving exactly the same set of circumstances, the chances of this being extremely low. The Members were concerned that this demonstrated an error of approach, which ultimately impacted on the Panel's decision on sanction.

- 9.9 The Members noted, however, the evidence on day seven of the hearing which describes the Registrant showing some insight, such as acknowledging that her actions had amounted to emotional abuse to her children. They therefore considered the Panel's decision on insight would be difficult to challenge. However, they considered the conclusion on risk of repetition to be more questionable, and that there appeared insufficient evidence for the Panel's conclusion that the risk of repetition is low, considering that an absence of sufficient insight could indicate a risk of behaviour being repeated.
- 9.10 The Members considered that the Panel's finding on risk of repetition almost certainly influenced the Panel's subsequent decisions in relation to public protection impairment and sanction. It appeared the Panel had failed to recognise the risk that the Registrant could (if faced with similar pressures), present to the public, if her registration was not restricted. The Members concluded that the Panel's conclusion on risk of repetition, and therefore the decision on impairment on public protection grounds, was wrong.

***Was the warning sufficient to protect both limbs of the public interest?***

- 9.11 The Members next discussed whether the imposition of a warning was insufficient to protect both limbs of the public interest, i.e., public confidence and maintaining professional standards.
- 9.12 The Members noted the Panel's comment that:
- '[REDACTED] failed to appreciate that subjecting her children to emotional distress and emotional abuse, and being dishonest to obtain a social work role, cannot be excused or explained by her personal circumstances. Her actions were wholly unacceptable, regardless of any difficulties in her personal life.'*
- 9.13 The Members agreed with this statement, and the Panel's conclusion that the public would be 'appalled' to learn of a social worker, whose role it is to safeguard children, behaving in this way towards her own children.
- 9.14 The Members therefore had difficulty reconciling this statement and the Panel's impairment finding on public interest grounds, to the Panel's subsequent decision that the public would not wish to see her removed from her social work role and subsequently faced with further financial difficulties. The Members did

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<sup>2</sup> Professional Standards Authority v (1)HCPC (2)Doree [2017] EWCA Civ 319

not agree with the Panel's comment that public confidence could be promoted and maintained by issuing a warning, given its earlier comment that:

*"Members of the public would be extremely concerned if a social worker, who had caused emotional distress and emotional abuse to her own children was allowed to practise in social work without restrictions."*

- 9.15 On the whole, the Members considered the Panel's reasoning to be poor and irrational in parts. The Members were concerned that the Panel had 'cherry picked' from the evidence, and that the determination was inconsistent throughout.
- 9.16 The Members considered it appeared the Panel had taken a lenient approach given the Registrant's personal and financial circumstances and were attempting to avoid imposing a restrictive sanction. The Members did not consider that the Registrant's financial pressure should have been a weighty factor in the Panel's decision-making on sanction, considering that honesty is paramount for a Registrant, especially when under personal pressure. The Members considered the dishonesty to obtain employment to be a serious aggravating factor, which, given the Registrant's failure to own up when given the opportunity, had been downplayed by the Panel. The Members considered that this conduct completely undermines the fitness to practise regime and the maintenance of professional standards within the social work profession as a whole.
- 9.17 The Members considered there was a fundamental failure by the panel to properly interpret the purpose of a sanction in order to maintain public confidence and professional standards. They considered that despite the registrant's personal circumstances, given the serious misconduct found, a restrictive sanction was required in order to do this, and that a 12-month suspension was likely the very least that was required to reflect the Panel's findings.
- 9.18 The Members therefore concluded that the reasons provided by the Panel were poor and inconsistent, and a member of the public would not understand the reasons for it issuing a warning rather than imposing a suspension. The Members therefore considered the warning to be insufficient to uphold public confidence and maintain professional standards.

#### ***The Panel's failure to adhere to the sanctions guidance***

- 9.19 The Members discussed the Panel's acknowledgment that the Registrant's misconduct matched the descriptors provided in the SWE's Sanctions Guidance, for circumstances in which a suspension would be justified. They considered, however, that the panel had then failed to adhere to the guidance or explain why it departed from it.
- 9.20 The Members noted that the Panel had reminded itself it should impose the least restrictive sanction necessary to achieve proportionality. They also noted that the Panel conceded at one point that a differently constituted panel may have been persuaded that a suspension was required, and that the SWE case presenter proposed a suspension.



9.21 The Members took into account the SG with regard to suspension orders and noted the relevant passages in relation to ‘Abuses of Trust’ into which the emotional abuse would fall and ‘Dishonesty’, which state that any abuse of trust by a social worker is a serious, and that dishonest “conduct is highly damaging to public trust in social workers and is therefore usually likely to warrant suspension or removal from the register.”

9.22 However, despite acknowledging that the combination of the finding of abuse and dishonesty increased the likelihood of suspension being appropriate, the Panel went on to say:

*“this was an unusual case, and one where reasonable and well-informed members of the public and social work profession would not demand there be restrictions on [REDACTED] practice”* and that

*“under the unique and exceptional circumstances of the case, restricting [REDACTED] practice was not proportionate.”*

9.23 The Members were not clear about why the Panel considered this to be a case involving unique and exceptional circumstances or why the Panel considered the public would not consider restrictions necessary. The Members did not consider the Registrant’s personal circumstances to be unique or exceptional such that they could properly justify a departure from the SG. The Members did not identify anything that was unique or exceptional about the Registrant’s remediation, steps taken to prevent recurrence or professional circumstances.

9.24 The Members further noted that the Panel had failed to apply the principles in *Bolton*<sup>3</sup>. The Panel did not take proper account of the importance of maintaining public confidence, in the social work profession as a whole, even if that came at the price of the Registrant and her family enduring further financial hardship.

9.25 The Members therefore concluded that there was an inconsistency between the findings of facts, findings on impairment and the issuing of the warning. The Members considered that the Panel had failed to explain adequately why it had departed from the SG. Ultimately, they concluded that issuing a warning was irrational and wrong.

### **Conclusion on insufficiency for public protection**

9.26 The Members concluded that the panel’s decision to issue a warning was clearly insufficient for public protection in the following respects.

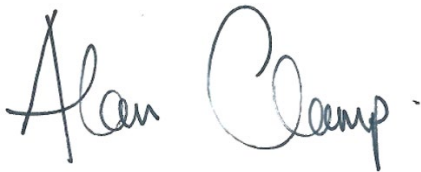
9.27 The Panel’s reasoning in relation to the risk of repetition and associated likely risk to the public were flawed. As a consequence, the finding of impairment on one limb of the public interest only does not sufficiently protect the public. A five year warning does not reflect the gravity of the Panel’s combined findings regarding the Registrant’s misconduct and continued lack of insight. The Panel placed disproportionate weight on the Registrant’s personal factors when deciding whether a suspension was required. A member of the public may find it hard to understand why a social worker who had abused her own children, deceived a prospective employer and failed to fully understand the seriousness of her behaviour was allowed to continue to practise without restriction.

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<sup>3</sup> Bolton v Law Society [1993] EWCA Civ 32

**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 The Members specifically considered the likely impact of any appeal on the Registrant and her personal circumstances. The Members acknowledged that financial hardship might result. However, they considered the need to adequately protect the public by the imposition of a restrictive sanction was both necessary and outweighed the Registrant's personal interests.
- 10.4 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)**

**20/01/23**

**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 panel of Adjudicators of SWE
<b>The Registrant</b>	[REDACTED]
<b>The Regulator</b>	Social Work England
<b>Regulator’s abbreviation</b>	SWE
<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 5 October 2022
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The SG</b>	Regulator’s Indicative Sanctions Guidance in force at sanction stage