

Virtual Section 29 Case Meeting

06 July 2021

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
Simon Wiklund, Head of Legal, Professional Standards Authority

In attendance

David Bradly, Counsel, 39 Essex Chambers, Legal Advisor

Observers

Caroline Corby, Chair, Professional Standards Authority
Briony Alcraft, Scrutiny Team Co-ordinator, Professional Standards Authority
Rebecca Senior, Senior Legal Reviewer, Professional Standards Authority
Michael Hannah, Senior Scrutiny Officer (Legal), Professional Standards Authority
Mike Humphries, Performance Manager, Professional Standards Authority
Remi Gberbo, Solicitor, 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 the statutory time limit for an appeal would expire on 8 July 2021.

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 dated [REDACTED]
- Counsel's Note dated 6 July 2021
- Response from SWE to notification of case meeting
- SWE's notification email regarding Registrant's recent removal from the register
- Regulator's Bundle and ICP documents
- SWE's Professional Standards Guidance dated April 2020

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- 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 Section 29 Meeting.

8. Background

- 8.1 The matters forming the subject of the allegations were referred to the Health and Care Professions Council (HCPC) by the Metropolitan Police in [REDACTED] following a multi-agency investigation involving the National Fraud Intelligence Bureau, and three UK Borough Councils in respect of the financial exploitation of Service User 1 (SU1), a 54-year-old vulnerable adult with learning disabilities and an IQ of less than 70. The investigation concerned the withdrawal of benefits estimated by the police to amount to around £200,000 being withdrawn from a bank account in the name of SU1 (statements confirmed £70,870 had been withdrawn via cash withdrawals between [REDACTED], many of which transactions the police indicated had been in [REDACTED]).
- 8.2 Regulatory concerns were also reported by two of the Borough Councils that the Registrant had used his position as a social worker for financial gain in relation to SU1.
- 8.3 The concerns came to light when a member of the public made a referral to a Council Learning Disability Team in [REDACTED] that an apparently vulnerable person was unsupported and without food.
- 8.4 Following a visit from the social care team, SU1 was found to be dishevelled and unkempt in filthy clothes, sodden in his own waste and living in squalid conditions and with no food or access to money or support. Enquiries with him confirmed that his 'landlord and friend' was the Registrant and that he had previously lived in the Registrant's house in [REDACTED].
- 8.5 Investigations confirmed that applications had been made for disability living allowance benefits on SU1's behalf which had been paid into SU1's bank account but had been withdrawn, SU1 reporting that he was sent £10 a month in cash to spend by the Registrant.
- 8.6 Following a referral to the police, SU1 was interviewed and stated that he had moved at the suggestion of the Registrant who had told him that it was not safe for SU1 to be in [REDACTED]. SU1 reported that he did not have links with the [REDACTED] area and did not know why he had moved there.
- 8.7 Diary entries by the Registrant between [REDACTED] include a description of SU1 as being 'desperately unhappy with his accommodation' and that he 'would like to move'. Arrangements were made in [REDACTED] to move him out.
- 8.8 SU1 moved from [REDACTED] to a property in [REDACTED] in [REDACTED]. Land Registry records confirmed that the Registrant purchased this property on [REDACTED].
- 8.9 Evidence from the [REDACTED] confirmed that the SU1 was not a tenant at the property although was listed as a 'non-dependent' and no

housing benefit was paid in respect of his occupancy and no tenancy agreement was available.

- 8.10 SU1 moved to a property in [REDACTED] in [REDACTED] in respect of which Housing Benefit was paid directly to the Registrant. Land Registry records confirm that the Registrant purchased this property on [REDACTED].
- 8.11 SU1 lived with Service User 2 (SU2) at the property until SU2 was hospitalised with kidney failure in [REDACTED]. The report to the ICP indicates that SU2 was also professionally connected to the Registrant although he had refused to co-operate with the investigation by the police or the HCPC.
- 8.12 Police records included reference to concerns that the Registrant had moved other former [REDACTED] service users to properties around the [REDACTED] owned by him and for whom he also received housing benefit payments.
- 8.13 Police records confirmed the Registrant was arrested at [REDACTED] Police Station on [REDACTED] and was interviewed under caution but gave no comment answers to all questions put to him.
- 8.14 The Crown Prosecution Service concluded on [REDACTED] that criminal charges should not be brought due to the absence of evidence from the bank to support the diversion of funds/withdrawal of money from ATMs etc due to the time elapsed and the fact that the SU1's account could not be relied on without corroboration.
- 8.15 The allegations before the substantive hearing of the Fitness to Practise Committee of Social Work England alleged that the Registrant, whilst registered as a Social Worker, used his position for financial gain by arranging for SU1, who he was and/or had been professionally involved with, to live in a property, which was owned by him, that he received payment(s) of SU1's housing benefit; and did not declare any actual and/or potential conflicts of interest to his employer in relation to the placement of SU1 in property owned by him. This was alleged to have been dishonest.
- 8.16 The Panel found most of the charges unproven and determined the proven allegations did not amount to misconduct.
- 8.17 The Registrant did not attend the hearing, was not represented and did not engage with the proceedings.

Applying Section 29 of the 2002 Act

- 8.18 The Members considered all the documents before them and received legal advice.
- 8.19 The Members discussed the following concerns about the decision:

Did the allegations advanced by SWE encapsulate the seriousness of the misconduct?

- 8.20 The Members discussed the allegations advanced by SWE, and the fact that they focused narrowly on the Registrant's actions in using his position as a social worker for financial gain by arranging to let out his property to SU1 with whom he had been professionally involved, receiving housing benefit and not

declaring any conflict of interest to his employer. The Members, however, considered that there was evidence available to SWE, and before the Panel, of the Registrant's failure to safeguard SU1 by terminating the Corporate Appointeeship in place to protect his financial interest prior to moving him to properties owned by him, and failing to make any arrangements to safeguard SU1 from physical harm, neglect and financial abuse when he knew that SU1 was vulnerable, incapable of managing his finances, and in need of on-going support.

- 8.21 The Members considered that the evidence in SWE's possession represented additional and arguably more serious regulatory breaches which were not properly encapsulated within the allegations, and that this failure by the Panel to conduct an adequate inquiry into the significance of the evidence in SWE's possession accordingly led the Panel to reach an outcome that was insufficient to maintain standards in the profession and insufficient to maintain public confidence in the profession.

Did the Panel take sufficient account of the public interest when acceding to SWE's application to amend the allegation?

- 8.22 The Members discussed that at the commencement of the hearing SWE applied, and the Panel agreed, to amend the allegation so as to delete [REDACTED] from the stem of particular 1 and substitute [REDACTED] (the year of the Registrant's registration), on the basis that this properly reflected the evidence, the effect of which was to narrow the timeline in which the Registrant's conduct was to be considered and to limit the scope of the Panel's inquiry.
- 8.23 The Members were concerned, however, that this amendment excluded a relevant period of time which accounted for arguably the most serious aspects of the Registrant's misconduct before his registration as a Social Worker when he had been the Independent Living Officer appointed by [REDACTED] Council to provide support to SU 1. The Members considered that there was a failure by the Panel to consider the relationship between the Registrant and SU1 during that time, and a failure of the Panel to consider the relevance of the Registrant's conduct to his practice as a Social Worker. The Members considered that this assessment was necessary in order for the Panel to identify the duties which the Registrant then owed to SU1 from the date of his registration and in order for it to assess whether or not the Registrant had acted in breach of those duties.
- 8.24 The Members concluded that when determining whether or not to inquire into evidence of misconduct undertaken prior to registration as a Social Worker, SWE and the Panel failed to give adequate consideration to the overarching objective of public protection and failed to have regard to the public interest test in regulation 25(2) of the Social Workers Regulations 2018 and that the Panel had erred in accepting the amendment to the allegation.

The Panel's findings

- 8.25 The Members discussed whether the Panel had erred in finding allegation 1 not proved, noting that the evidence was that the Registrant was at all times SU1's Independent Living Officer rather than his Social Worker. The Members considered that following the narrowing of the window of concern to after [REDACTED], the resulting allegation was flawed in seeking to articulate that the Registrant had 'arranged' for SU1 to live in the property in circumstances that he had commenced living there some three years earlier. The Members considered that the Panel adopted a narrow approach to this allegation, given the evidence, and it should have given consideration to amending the allegation.
- 8.26 Further, in relation to the [REDACTED] property, the Members considered that the Panel adopted a similarly narrow view in concluding that there was no evidence that the Registrant had used his position as a social worker to receive the housing benefit payments, and therefore that the Panel, bearing in mind its duty to play a proactive role in making sure that the case is properly presented and that the relevant evidence is placed before it, and bearing in mind the principles set out in *Doree*², should have considered an amendment to the allegation rather than declining to make a finding.
- 8.27 The Members were also concerned by the wholesale withdrawal of allegation 2, concerning the Registrant's failure to encourage and/or help SU1 to maintain his own health and/or well-being. The Members considered that because the Registrant had previously had a formal professional relationship with SU1 there remained a duty on the Registrant to safeguard him and could not see a justification for this charge being withdrawn on the evidence available.
- 8.28 The Members turned to the findings on allegation 3, and were surprised at the Panel's approach to considering dishonesty, in particular that the Panel had been unable to make a positive finding regarding the Registrant's state of mind between [REDACTED] and [REDACTED]. It's conclusion that there was insufficient evidence for it to be satisfied that, at that time, the Registrant believed he was not doing anything wrong by not notifying [REDACTED] that SU1 was living in a property the Registrant owned appeared irrational. The Members noted that the Registrant knew the SU1 was vulnerable and that he had been subject to a Corporate Appointeeship, and therefore considered there was at least strong inference that the Registrant knew the living arrangement was wrong and that he should have informed the Council.
- 8.29 The Members considered that this narrow approach and the Panel's failure to draw any reasonably available inferences from the facts, resulted in a wholly unsatisfactory outcome whereby it failed to properly and adequately inquire into the dishonesty allegation, leading to an absence of findings.
- 8.30 The Members concluded, therefore, that the failure to amend allegation 1 and the Panel's finding in relation to dishonesty was wrong and represented a procedural error which led to the gravity of the case being substantially diminished and which did affect the outcome of the case.

² PSA v HCPC (1) Doree [2017] EWCA 319

Conclusion on insufficiency for public protection

- 8.31 The Members considered this to be a serious case involving a vulnerable service user who was taken advantage of by the Registrant and suffered harm as a result of his actions. They considered that a member of the public reading this decision would be left with a number of questions about the degree to which the Panel have dealt with what is appropriate conduct for a social worker.
- 8.32 The Members concluded that the Panel's failure to conduct any or any adequate inquiry into the significance of the facts established by the evidence in SWE's possession, the failure to amend allegation 1, and the withdrawal of allegation 2, were serious procedural irregularities and that that the Panel's finding that the facts proved in particular 2 did not amount to misconduct or that the Registrant's fitness to practise was impaired were wrong. Consequently, the Members considered the decision is not sufficient for the protection of the public.

9. Referral to court

- 9.1 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.
- 9.2 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.
- 9.3 The Members also took into consideration the recent outcome of a separate case regarding the Registrant, which concluded on [REDACTED], and in which a Panel of SWE adjudicators directed the removal of the Registrant's name from the register of Social Workers. The Members noted that the Registrant's appeal period in that case is still active at the time of this meeting.
- 9.4 Therefore, taking into account those considerations, and that it is an appropriate use of the Authority's resources to protect its position until the removal takes effect or the Registrant appeals, in addition to the 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)

09/08/21

Dated

Annex A – Definitions

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

The Authority	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Committee of SWE
The Registrant	[REDACTED]
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 [REDACTED]
The Court	The High Court of Justice of England and Wales
The Code	Regulator's Code of Practice in force at time of incident