

Section 29 Case Meeting

02 February 2022

157-197 Buckingham Palace Road, London SW1W 9SP



Anne Ward

Members present

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

Kisha Punchihewa, Head of Legal, Professional Standards Authority

Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority

In attendance

David Bradly, Counsel, 39 Essex Street Chambers

Observers

Remi Gberbo, Lawyer, Professional Standards Authority

Michael Hannah, Scrutiny Officer, Professional Standards Authority

Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority

Richard West, Scrutiny Officer, Professional Standards Authority

This meeting was held remotely due to the ongoing pandemic.

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 4 February 2022.

6. The relevant decision

- 6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 29 November 2021.
- 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 29 November 2021
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 22-29 December 2021
- Legal report by 39 Essex Street Chambers
- Hearing Bundle – Exhibit Bundle
- SWE's 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 the HCPC 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 Social Worker in the Adult Social Care Team, at Lancashire County Council ('LCC') at the material time. The allegations arose in the context of the Registrant's then employment.
- 8.2 On 30 March 2016 LCC received a complaint from Person A, an ex-service user that the Registrant had entered into a personal relationship with him and that the relationship had developed into a sexual relationship.
- 8.3 The Registrant had become Person A's allocated social worker in August 2010 following his discharge after a lengthy stay in hospital after a suicide attempt resulting in him being in a coma and which left him with visual impairment. Person A alleged that the relationship began shortly thereafter and became a sexual relationship in November/December 2010 and continued until 2016.
- 8.4 He alleged that that he and the Registrant had become friends initially, her regularly visiting him on Tuesday evenings on a social basis and that after sharing a meal in December 2010, she had initiated a sexual affair which continued for 5 years, during which time they had shared holidays together.
- 8.5 On 31 March 2016, Person A retracted his complaint, claiming that he had fabricated the allegations while under the influence of alcohol. LCC investigated the complaint nonetheless under its safeguarding procedures and thereafter under its internal disciplinary procedures. Person A had refused to participate in the safeguarding investigation.
- 8.6 LCC's review of the care records confirmed that the Registrant had been assigned as the active social worker on 10 August 2010 and that a record had been made on 25 February 2011 that Person A had advised that he wanted to close his package of care. The last diary entry was a record of a home visit on 11 March 2011 and the Registrant had closed the case herself on 17 March 2011. The Registrant had subsequently accessed the electronic records again in relation to Person A's telecare equipment in May 2011 and again in May 2015.
- 8.7 During LCC's investigation, the Registrant was suspended. She had submitted a written response to the allegations maintaining that there had been no personal/sexual relationship with Person A. She denied having been on holiday with him and denied that she had breached professional boundaries in any way. Her explanation for having provided her personal mobile number to Person A was that it was for emergencies and that when he had returned home, he was scared and in a 'pretty dark place' and her work mobile phone had a poor signal. She suggested that Person A's credibility could not be relied upon due to his alcoholism.
- 8.8 The Registrant had stated that her last contact with Person A was in February/March 2016 when he had contacted her 'out of the blue' asking her to help feed his cats while he was in hospital prior to which there had not been any contact since she had ceased being his social worker in 2011.
- 8.9 The Registrant was dismissed with immediate effect by LCC on 27 February 2017. Her dismissal was upheld upon appeal and a referral was made to the HCPC in April 2017.

- 8.10 On 30 January 2018 Person A contacted LCC again, re-stating his allegation of a sexual relationship with the Registrant, this time, confirming that he would be prepared to provide a statement. He was interviewed by LCC on 22 February 2018 and 16 April 2018 and provided 54 photographs showing the Registrant, some of which were sexually explicit.
- 8.11 The Registrant was interviewed again in July 2018 and again denied that there had been any sexual relationship with Person A although accepted that there had been a friendship involving occasional pub lunches in her own time when she was no longer his social worker. The Registrant denied the allegation that there had been a sexual relationship and denied that she had gone on holiday with Person A. She alleged that she had tried to end the friendship on several occasions, but that Person A was abusive and manipulative.
- 8.12 When she was shown some of the photographs, the Registrant accepted that those were of her and admitted that there had been a sexual relationship but that this had commenced in 2013/2014 after she had ceased being his allocated social worker and had ended in 2015.
- 8.13 The HCPC's Investigating Committee Panel referred the matter for hearing on 18 October 2019. The allegations advanced by SWE were that the Registrant had had a personal relationship with Person A while she was his allocated social worker between 2010-2016 and that she had had a sexual relationship with him during that period. It was alleged that the Registrant had not reported her relationship to LCC and that in not doing so, she had been dishonest.
- 8.14 The Registrant had admitted the allegation that she had had a personal and sexual relationship with Person A but denied that this was whilst she was his allocated Social Worker. She admitted that she had not disclosed her relationship to LCC and admitted that in not doing so she had been dishonest. The factual matters to be resolved before the Panel were whether the personal and sexual relationship between the Registrant and Person A began when the Registrant was his allocated social worker.
- 8.15 The Panel concluded that it was not plausible that there had been no personal relationship prior to 18 March 2011 and considered it more likely than not that the Registrant and Person A had formed a close connection early on in their professional relationship. The Panel also concluded that the relationship between the Registrant and Person A had become sexual by the end of January 2011, while she was his allocated Social Worker and had lasted until March 2016.
- 8.16 The Panel determined that the proven findings amounted to misconduct and found the Registrant's fitness to practise impaired on both public protection and public interest grounds. The Panel directed an order for suspension for 12 months with a review hearing.

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:

Undercharging

- 9.3 The Members first considered whether the allegation considered by the Panel adequately reflected the nature and extent of the misconduct in this case, as supported by the evidence in the possession of the SWE. The Members were considered that the allegation did not particularise the extent of the misconduct and could have caused the panel to underestimate its seriousness. The Members noted that they were required also to consider the materiality of any defect in charging.
- 9.4 The Members considered the allegation of dishonesty advanced by SWE. This only referred to the Registrant not informing LCC of her personal/sexual relationship with Person A. The Members considered whether the allegations adequately encapsulated the extent of the Registrant's dishonesty, Person A's vulnerability, the lies told by the Registrant when initially denying the relationship as well as the full extent and length of the relationship.
- 9.5 The Members considered the nature of the behaviour exhibited by the Registrant. The dishonesty and lack of candor demonstrated by the Registrant was extraordinary in terms of the number of occasions where the Registrant denied that there was a relationship with Person A. Of particular concern was her response at the Safeguarding Investigation Meeting.
- 9.6 The Members were also troubled by the number of disparaging comments made by the Registrant regarding Person A in an attempt to discredit him.
- 9.7 The Members concluded that the allegation before the Panel did not appropriately capture all the issues relevant to misconduct in this case – including all the occasions where the Registrant acted dishonestly or attempted to mislead her employer and her regulator in terms of the nature and extent of her relationship with Patient A and the vulnerability of Person A which the Registrant clearly exploited. The Members considered that this failure resulted in the Panel losing sight of or limiting the seriousness of the misconduct alleged and the issues they needed to address in the case.
- 9.8 The Members concluded that had the allegations been set out differently and the full extent of the Registrant's dishonesty and Patient A's vulnerability been included this would have led the Panel to identify and have adequate regard to the seriousness of this misconduct, the extent to which it impaired her fitness to practise and the impact that these factors should have had on sanction.

Panel's analysis of seriousness and aggravating factors

- 9.9 The Members considered whether the Panel fully addressed the seriousness of the misconduct, the full extent of the aggravating factors, the Registrant's lack of insight and the real potential for remediation, and what impact any concerns around this had on their consideration of the need to uphold public confidence in the profession. This discussion was based on the charges as drafted.
- 9.10 The Members considered the Panel's assessment at the misconduct stage to be adequate. However, concerns were raised about the gaps in reasoning at the impairment stage. The Members were troubled that, given the professional relationship/power dynamic between the Registrant and Person A, his particular vulnerability was not emphasised at impairment stage and noted as a public

interest concern. Concerns were also raised that the Panel did not appear to have any regard for the fact that the Registrant had a personal and sexual relationship with a client – the Members considered that the focus of the Panel's attention was the charge of dishonesty. Whilst this was plainly a matter of concern, this was a multi factorial case and their approach limited their consideration of the relevant issues.

- 9.11 The Members felt the written decision was poor and suggested that the Panel had not grappled with all the relevant issues. This was a case which had public interest elements and the nature of the misconduct was at the upper end of the scale of seriousness (in particular her actions in deliberately misleading a safeguarding investigation, her attempts to use the patient's vulnerabilities to persuade the authorities not to believe statements he had made about her which were in fact true and that she had a personal and sexual relationship with a service user). The Panel had failed to identify that this was conduct that was incompatible with registration as a social worker, or to explain why this was not the case. The identification of aggravating features was poor, as was the impact of this conduct on the public interest. The nature of this conduct was such that a more detailed consideration of sanction was required. The Panel's only reason for not erasing the Registrant appears to have been that she was considered a good social worker.
- 9.12 The Members also considered whether the Panel's findings in relation to insight were open to them. The evidence suggested that this remained an issue of concern. It was also of concern that the Panel did not consider whether the Registrant has a deep-seated attitudinal problem. Had the panel undertaken a more thorough assessment of these issues, it was likely that they would have reached a different decision on sanction.
- 9.13 The Members were concerned that despite the lapse of time, the Panel provided the registrant with a further opportunity to demonstrate insight.
- 9.14 The Members concluded that the Panel were not sufficiently clear and explicit as to what the main factors and concerns were and failed to therefore give sufficient weight to those factors.

Sanction

- 9.15 The Members considered whether the decision to impose a 12-month suspension was one that no Panel acting reasonably could have made and whether removal was mandated in this case.
- 9.16 The Members noted that the Panel had found that at the time of starting the relationship with Person A the Registrant knew this was wrong. The Members therefore struggled to see how the completion of relevant courses by the Registrant would improve her insight. She was aware at the time that the relationship was inappropriate. Furthermore, the Registrant chose not to seek help from colleagues or managers on the matter. The Members were inclined to consider the Panel's finding that the Registrant was starting to demonstrate insight a generous conclusion given that it appeared apparent the Registrant had demonstrated attitudinal problems as highlighted by her repeated dishonesty and attempt to shift culpability onto Person A.


- 9.17 The Members concluded that the Registrant's conduct would warrant erasure. The fact of the relationship, the length of time over which the relationship occurred and her repeated dishonesty in the Members opinion tipped the case into erasure territory. The Members acknowledged that the Registrant may have been worthy of another chance had she been honest earlier on regarding the relationship but her continued denial, the vulnerability of Person A as well as her conduct in blaming Person A and undermining him by using his health conditions against him and the lack of any convincing insight all presented a strong case for erasure.

Conclusion on insufficiency for public protection

- 9.18 The Members concluded that the Panel's decision to suspend the Registrant was insufficient for public protection.
- 9.19 The Registrant had demonstrated sustained and systematic dishonesty, and, in the Members' opinion, shown very little insight, which raised strong public protection and public interest concerns. The Members considered that given the repeated dishonesty, vulnerability of Person A and the Registrant's limited insight the Panel's decision not to erase the Registrant warranted further explanation. The Members concluded that it was hard to see how erasure was not directed.

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 the Members 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.



Alan Clamp (Chair)

22/02/22

Dated

11. Annex A – Definitions

11.1 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 Panel of Social Work England
The Registrant	Anne Ward
The Regulator	Social Work England
SWE	Social Work England
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 29 November 2021
The Court	The High Court of Justice of England and Wales
The SG	Regulator's Sanctions Guidance