

Section 29 Case Meeting

18 November 2022

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Christine Braithwaite, Director of Standards and Policy, Professional Standards Authority
David Martin, Concerns and Appointments Officer, Professional Standards Authority

In attendance

David Hopkins of counsel 39 Essex Chambers

Observers

Amrat Khorana, Board Member, Professional Standards Authority
Alicia Hasperue, Administration Officer, Professional Standards Authority
Richard West, Scrutiny Officer, Professional Standards Authority
Imogen Peroni, HR 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 25 November 2022.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 22 September 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 22 September 2022
- The Authority's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 16 November 2022
- The Social Workers Regulations
- Social Work England's Indicative Sanctions Guidance dated 26 November 2019 – in force at the time of sanction stage
- The Authority's Section 29 Case Meeting Manual

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

7.2 The Members and the Legal Advisor were provided with a copy of a response from the Social Work England to the Authority's Notification of s.29 Meeting. The Members considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

8. Background

8.1 The Registrant was employed as a Social Worker at [REDACTED] in the [REDACTED] Team.

8.2 A referral was made to the HCPC [REDACTED] on the basis of concerns that on [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8.3 On 14 August 2017, the HCPC's IC determined that there was a case to answer in respect of misconduct. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8.4 [REDACTED]
[REDACTED]
[REDACTED]

8.5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8.6 [REDACTED]
[REDACTED]
[REDACTED]

8.7 The Registrant did not attend the proceedings and was not represented.

8.8 The Panel found impairment [REDACTED]
[REDACTED] The Panel directed that the Registrant be suspended for a period of 24 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:

Were Social Work England (SWE) wrong not to allege that the registrant's fitness to practise was also impaired by reason of her misconduct?

9.3 The Members were concerned that SWE had failed to allege misconduct in relation to the Registrant's actions in:

- [REDACTED]
[REDACTED]
- [REDACTED]

9.4 The Members noted that the allegations had originally been put the Registrant on misconduct grounds, [REDACTED]

[REDACTED] The Members noted that at a case management meeting in May 2022 [REDACTED]
[REDACTED] No allegations in relation to her misconduct.

9.5 The Members considered that the failure to include the misconduct issues was a potential serious procedural irregularity as had the Panel considered these matters in addition to the allegations as charged it may well have imposed a more serious sanction – namely erasure.

The sanction of suspension was not sufficient to protect the public

9.6 The Members were concerned that the decision to impose a suspension order was not sufficient to protect the public.

9.7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9.8 The Members noted that whilst there was the possibility of the [REDACTED] [REDACTED] if she provided evidence that she was no longer a risk, this was only a slight possibility, and public protection would have been maintained and public interest satisfied, had she been erased. The Members noted that whilst the Panel had considered this factor, they had placed significant weight on the potential for her to be removed before 2029.

9.9 The Members further noted that the Registrant's correspondence had demonstrated a lack of insight into her actions and that 5 years had passed

where the Registrant had failed to show any meaningful engagement, and concluded that public confidence would not be best served by a suspension.

- 9.10 The Members further considered that public confidence in the profession could not be upheld by imposing a suspension order given the Registrant had breached fundamental parts of her role as a Social Worker, [REDACTED]

Conclusion on insufficiency for public protection

- 9.11 The Members concluded that the panel's decision to impose a suspension order and in failing to charge the misconduct issues raised was a serious procedural irregularity and so the sanction was insufficient for public protection.

10. Referral to court

- 10.1 Having concluded that the panel's Determination was insufficient for public protection and that there had been a procedural irregularity, 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)

05/12/22

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	[REDACTED]
The Regulator	Social Work England
Regulator's abbreviation	SWE
Health and Care Professions Council	HCPC – Social Workers previous Regulator
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 20 – 22 September 2022
The Court	The High Court of Justice of England and Wales
The Code	The Social Worker Regulations
The ISG	Social Work England's Indicative Sanctions Guidance in force at sanction stage