

Section 29 Case Meeting

31 May 2024

16-18, New Bridge St, Blackfriars, London, EC4V 6AG



██████████ (Social Work England)

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Christine Braithwaite, Director of Standards and Policy, Professional Standards Authority
Marcus Longley, Board Member, Professional Standards Authority

Legal Advisor in attendance

Andrew Deakin, Counsel, 39 Essex Chambers, Legal Advisor

Observers in attendance

Caroline Corby, Chair, Professional Standards Authority
Simon Wiklund, Head of Legal, Professional Standards Authority
Kate Lawson, Policy Manager, Professional Standards Authority
Max Sesay, Accreditation Officer, Professional Standards Authority
Nirosha Thilagarajan, Lawyer, Professional Standards Authority
Richard West, Scrutiny Officer, Professional Standards Authority
Briony Alcraft, Scrutiny Team Co-ordinator, Professional Standards Authority

1. Definitions

1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the PSA, 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 PSA's decision whether or not to refer the case to the Relevant Court under Section 29 of the Act.

3. The PSA's powers of referral under Section 29 of the Act

3.1 The PSA 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 Determination 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 PSA 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 6th June 2024.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 12 April 2024.

7. Documents before the meeting

7.1 The following documents were available to the Members:

- Determination of the panel dated 12 April 2024
- The PSA's Detailed Case Review
- Transcripts of the hearing dated 10-12 April 2024
- Counsel's Note dated 29 May 2024
- Regulator's Bundle and Registrant's Bundle/Exhibits
- Case Examiners' Report and decision
- SWE's Sanctions Guidance
- The PSA'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 Social Work England to the PSA'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.

8. Background, Panel hearing and Determination

8.1 The Registrant was employed as an agency social worker and Team Manager for a Council Children's Single Assessment Team between 5 November 2018 and 14 December 2018.

8.2 On 8 August 2019, The registrant was referred by the Council to the Health and Care Professions Council (HCPC), the then regulator for social workers, for concerns regarding his managerial oversight in respect of two children, namely Child FP and Child JW. KM was the allocated social worker and the Registrant was the supervising social worker to both.

8.3 FP was a baby admitted to hospital on 10 November 2018 with an un-explained lesion on his face. The cause of this injury was unknown. The Hospital referred FP to the Council on 15 November 2018 as the cause of the injury remained unexplained. On 16 November 2018 the Multi-Agency Safeguarding Hub referred FP's case to a strategy meeting. At that meeting, at which the Registrant was chair, it was agreed to hold a section 47 inquiry and, further, information about FP's father's violence was disclosed.

8.4 On 20 November 2018 a discharge planning meeting was held. Documentation recorded that KM and the police advised FP's mother to seek disclosure regarding Child FP's father under "Clare's Law" (officially known as the Domestic Violence Disclosure Scheme). KM recommended closure of the case. On 22 November 2018 the Registrant, as KM's Manager, concurred with the recommendation that "the Section 47 close with NFA". On 20 November 2018 FP returned to hospital with serious skeletal injuries.

8.5 JW was 14 years old at the material time. On 12 November 2018 the Police raised concerns with the Council that JW's brother was attending school under the influence of drugs, that he was dealing drugs and involving other young people in his activities. Concerns were raised that the father may be involved in supplying drugs to JW's brother. A strategy meeting was held on 13 November 2018 and a section 47 inquiry initiated. The strategy meeting identified a number of specific actions to be taken. JW's father refused to co-operate with the s.47 inquiry. He did, however, agree that KM could visit JW at school. He refused permission for KM to speak to Housing Services or Children's Services (although it should be noted that no such permission was required.)

8.6 The specified activities did not take place. KM nevertheless recommended that the case be closed on the basis that he had seen JW and his brother at school and did not have concerns. The Registrant agreed with this approach on 22 November 2018. JW's school reported further concerns a week after the recommended closure of the case.

8.7 The registrant faced allegations of failing to safeguard Child FP by not adequately exploring the risks to him, in particular, the potential causation of the

injury Child FP presented with on 10 November 2018; and/or the risks posed to Child FP by his father. Further, it was alleged that he failed to advise the allocated social worker that use of Clare's Law was not appropriate in this case and the mother of Child FP could have been told about her partner's history under s 47 powers, and that he agreed with Child FP's allocated social worker's recommendation for the closure of the s 47.

- 8.8 In relation to JW, it was alleged that he failed to safeguard JW by not ensuring the allocated social worker spoke to JW alone or ensure his wishes and feelings were heard; did not ensure the allocated social worker undertook enquiries with Children's Services and/or Housing; and/or agreed with JW's allocated social worker's recommendation for the closure of the s 47 case.
- 8.9 The Panel found all but one of the allegations proved and that the registrant's failings amount to misconduct. The panel found, however, that the registrant's fitness to practise was not impaired, either on the personal or public element. It did not issue either advice or a warning and the case concluded with no further action.

9. Consideration and application of Section 29 of Act

- 9.1 The Members considered all the documents before them and the legal advice received from the legal advisor in detail.
- 9.2 The Members considered the finding of no impairment and whether the panel erred in this regard. They noted the panel's findings on the personal element to be sound and that the panel had taken all relevant factors into account in its consideration of impairment on public protection grounds.
- 9.3 The Members were however concerned with the panel's decision not to find impairment on public interest grounds. They considered that the registrant failed in his responsibility to adequately safeguard the children, both of whom suffered harm as a result of his failures to carry out second checks. They considered the panel, having referenced the seriousness of the registrant's misconduct, erred in focussing on his remediation and personal impairment, and then placed too little weight on the public confidence aspect of its decision. The members concluded that upholding and declaring standards was crucial for the panel, but that it appeared not to sufficiently grapple with this, resulting in a decision which failed to send the appropriate message to the profession.
- 9.4 Further, the members did not consider that the Panel had provided sufficient reasons for its finding and should have explained more clearly why, having found several serious counts of misconduct in relation to a senior social worker in a supervisory role, it did not consider a finding of impairment on public interest grounds was warranted. The Members disagreed with the panel's statements that a reasonable and well-informed member of the public would take everything into account and have no concerns with the findings. On the contrary, the members considered the public would find this a surprising decision and one in which public confidence in the profession had been undermined.

9.5 The Members noted that serious misconduct was found, and this this was not therefore a complete acquittal for the registrant. However, the Members concluded that the Panel's decision to find no impairment on public interest grounds was insufficient for public protection and did not fall within the range of reasonable findings open to it. Further, they concluded that in the alternative to a finding of impairment, a warning would have sent an appropriate signal to the public and the profession about the seriousness of the registrant's misconduct.

10. Referral to court

10.1 Having concluded that the Panel's Determination was not sufficient for public protection, the Members moved on to consider whether they should exercise the PSA's discretion to refer this case to the relevant Court.

10.2 In considering the exercise of the PSA's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the PSA's resources proportionately and in the public interest.

10.3 They bore in mind that misconduct had been found and that there are no current concerns about the protection of the public, given the remediation, the length of time since the events, and the evidence of good practice since the events.

10.4 The Members also took into account the detailed letter received from SWE setting out its views and intentions regarding the learning to be fed back to the adjudicators and legal advisors.

10.5 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the PSA should not exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.

11. Learning points

11.1 The Members agreed that the learning points set out at Appendix B should be communicated to the Regulator.



Alan Clamp (Chair)

20 June 2024

Dated

12. Annex A – Definitions

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

The PSA	The Professional Standards Authority for Health and Social Care
The Panel	A Fitness to Practise Panel of Social Work England
The Registrant	██████████
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 PSA as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 10-12 April 2024
The Court	The High Court of Justice of England and Wales
The SG	Regulator’s Impairment and Sanctions Guidance