

Section 29 Case Meeting

15 March 2021

157-197 Buckingham Palace Road, London SW1W 9SP



Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority
Tom Frawley, Board Member, Professional Standards Authority

In attendance

David Bradly, Counsel, Essex Street Chambers

Observers

Rebecca Senior, Senior Legal Reviewer, Professional Standards Authority
Rachael Martin, Team Coordinator, 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 17 March 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 15 March 2021
- Witness statements
- Witness bundles
- Case examiner final decision
- Final hearing – service bundle
- Notice of decision letter
- Hearing bundle
- SWE Sanctions Guidance

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- SWE Professional Standards 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 SWE to the Authority's Notification of s.29 Meeting.

8. Background

- 8.1 At the material time the registrant was [REDACTED] she had an intimate online relationship with Person A.
- 8.2 During the first period of contact within this time, Person A asked the registrant to send him pictures of her masturbating in front of Child A. During the second period of contact, Person A asked the registrant to sexually abuse Child A. The registrant did not comply with Person A's requests and communication with Person A ceased. At the time the registrant asked Person A whether he was engaging with other women and asking them to do similar things and he replied that he was not.
- 8.3 On [REDACTED], Person A was arrested by [REDACTED] Police and a subsequent police investigation established that Person A had been in touch with several women online and had similarly asked them to abuse their children and send pictures.
- 8.4 On [REDACTED], the registrant joined [REDACTED] as a newly qualified social worker. On [REDACTED], the registrant registered as a social worker.
- 8.5 Prior to [REDACTED], the registrant did not report to anyone what Person A had asked her to do with Child 1. On that day, the police attended at the registrant's home address and took a witness statement from her. On the same day the registrant informed her employer of, among other things, the police's attendance at her home and the fact that she had had contact with Person A, but not of what Person A had asked her to do with Child A.
- 8.6 On the same day, [REDACTED] informed the Council's [REDACTED] about concerns regarding the registrant's behaviour and its implications for her practice as a social worker.
- 8.7 On [REDACTED], the registrant was suspended from her employment with the [REDACTED] and the [REDACTED] began an investigation. A referral was then made to SWE.
- 8.8 At the hearing the panel found proved allegations that the registrant failed to report that Person A had asked her to commit sexual acts on and in front of Child A to the [REDACTED]. The registrant admitted the allegations but not that her fitness to practise was impaired. The panel found that the registrant's conduct did not amount to misconduct but issued a 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:

Procedural irregularity

Misconduct and impairment

9.3 The Members considered whether it was appropriate for the panel to have heard submissions in respect of and give a determination on misconduct separately from and prior to impairment. The Members noted that the panel proceeded in this manner despite counsel for SWE submitting that it would be usual for the panel to deal with misconduct at the same time as impairment.

9.4 The Members were satisfied that the panel's approach in considering misconduct first was not inappropriate and was in line with the approach taken by other regulator panels considering FTP proceedings. Accordingly, this also appeared a logical approach, since if misconduct was not found then there was no need to consider impairment.

9.5 In terms of the panel's consideration of mitigation at the misconduct stage. The Members considered that there are occasions in which mitigation and the circumstances of the alleged conduct do require this to be considered at the misconduct stage. In this case the Members noted the panel's poor reasons for not finding misconduct.

Finding of no misconduct

9.6 The Members considered whether the panel had adequately discharged its duty to investigate evidence and noted the rigour in which the registrant's employer had carried out its own investigations, which was significantly more detailed than the approach taken by the panel. The Members felt that the panel accepted the registrant's employers' findings and the registrant's own statements with minimal scrutiny and failed to take a probing and testing approach in their analysis of the evidence before them. The Members acknowledged that this approach by the panel may have been a result of the panel's sensitivity to the registrant's [REDACTED], but the Members considered that this approach was not consistent with public safety.

9.7 The Members felt that the panel accepted that the registrant was naïve at the time of alleged conduct and accepted her witness statements without fully scrutinising them. They were concerned by the level of insight shown by the registrant in her witness statements which did not always appear to engage with her own duties to safeguard.

9.8 The Members felt that the panel failed to fully explore the registrant's evidence and her claims that she was "the victim" and "groomed". The Members considered that this would have allowed the panel to have a fully informed view of the circumstances in which the conduct occurred and whether there was a greater duty on the registrant to have informed the police given that she was a student social worker at the time and therefore aware of safeguarding issues.

- 9.9 The Members felt that any member of the public regardless of their profession would be alert to potential safeguarding issues raised by Person A's requests and that the registrant's failure to notify the police and appropriate authorities was also a competence issue.
- 9.10 The Members acknowledged that there was some evidence to suggest that the registrant did not present an ongoing risk but concluded that it would have been reassuring if the registrant had given evidence, confirming that if she was ever requested to carry out the conduct requested by Person A in the future, she would report the individual to the police and appropriate authorities.
- 9.11 The Members concluded that the panel failed to fully investigate the registrant's evidence which resulted in their reasons for not finding misconduct to be weak.

Warning

- 9.12 The Members noted that the warning given to the registrant was not actually conveyed to the registrant during the hearing.
- 9.13 The Members noted that as the warning would not be published on the public facing register it did little to uphold professional standards to remind other professionals of their obligations.
- 9.14 The Members concluded that the warning imposed was inadequate since it read as the reasons that the panel considered a warning should be given, rather than an actual warning. They were concerned at the administrative and typographical errors that meant that the terms of the warning were entirely unclear within the decision.

Registrant's

- 9.15 The Members considered whether there was any evidence that the registrant's fitness to practise was impaired at the time of the hearing and whether the panel should have therefore adjourned the proceedings. The Members noted that the registrant has had investigations by the police, her employer and SWE appear to have exacerbated these difficulties and the registrant told the panel that she was receiving .
- 9.16 The Members felt that, while there were clear concerns about the registrant's , it was not the panel's role to investigate them at this hearing.

Conclusion on insufficiency for public protection

- 9.17 The Members concluded that the panel's decision to find no misconduct was insufficient for public protection.
- 9.18 The Members felt that the panel did not carry out its role effectively in that it did not sufficiently interrogate the evidence from Person A so that it could properly understand the circumstances in which she had failed to report Person A. The serious nature of those conversations might well have put her on notice that she should do so and suggested that she might have been guilty of misconduct. The panel's approach did not enable it to take a view as to whether or not that had that been appropriate, how far she had remediated her conduct and how far her fitness to practise was impaired.

9.19 In light of this, the Members concluded that the panel's failure to discharge their duty in investigating the evidence was a serious procedural irregularity which meant the Members were unable to determine whether the outcome of the case was insufficient.²

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 At this point in their discussions the Members noted that the registrant had suffered considerable [REDACTED] difficulties as part of the process and that the panel's failings were not her fault. They noted the danger that a decision to refer may add to her [REDACTED] difficulties. Nevertheless, given the seriousness of the concerns, the Members could not see an alternative approach that would address them.

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)

07/04/22

Date

² *Ruscillo* at [72]

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 Committee of Social Work England
The Registrant	[REDACTED]
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 [REDACTED]
The Court	The High Court of Justice of England and Wales