

Section 29 Case Meeting

30 January 2019

157-197 Buckingham Palace Road, London SW1W 9SP



Deborah Johnson

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority
Graham Mockler, Assistant Director of Scrutiny and Quality, Professional Standards Authority

In attendance

David Bradly, 39 Essex Chambers, Legal Advisor

Observers

Sophie Joseph, Senior Scrutiny Officer (Legal), 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 Thursday 7 February 2019.
- 6. The relevant decision**
- 6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 29 November 2018.
- 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 2018 (Caution).
 - Determination of the panel dated 21 April 2017 (Suspension).
 - Determination of the panel dated 20 October 2017 (Further suspension).
 - Determination of the panel dated 26 October 2018 (Further suspension).
 - The Authority's Detailed Case Review.

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- Transcripts of the hearing dated 28 November 2018 (Private) and 28-29 November 2018 (Public).
- Counsel's Note dated 30 January 2019.
- 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.

8. Background

- 8.1 The Registrant is a registered social worker. She had been dismissed by her local authority employer for making dishonest mileage claims for trips to a service user that did not take place. This was referred to the HCPC and the Registrant received a suspension order.
- 8.2 At the hearing under review she faced charges of (i) dishonestly completing three job application forms by failing to disclose (as asked by the forms to do) her previous adverse employment history, securing (non-qualified but social work related) employment; and (ii) lying to her manager by saying she was attending HCPC proceedings taken against a friend when those proceedings were addressed to her. The panel found the charges proved and imposed a caution order for three years.

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:
- (a) Was the Panel's decision reasonable given the allegations and evidence before it;
 - (b) Was there an error in focusing the allegations on three job application forms (dated 9 December 2015, 24 April 2016 and November 2016) when there

was further evidence of dishonesty in other job applications and the full interview transcript;

- (c) Would or might the outcome have been different if the further evidence had been presented to the Panel.

Was the Panel's decision reasonable given the allegations and evidence before it?

- 9.3 The Members noted that the HCPC had made a decision to focus the allegations on the three application forms completed by the Registrant where she had inputted N/A in response to the question regarding previous adverse employment history.
- 9.4 The Members noted that the Panel were made aware of the allegations found against the Registrant in the previous case at the sanction stage. Further, that it found that the Registrant had gained insight into the dishonesty alleged and that there were mitigating circumstances. The Members considered that the insight developed by the Registrant was restricted to the facts set out in the allegations.
- 9.5 The Members discussed the sanction looking at the totality of the evidence before the Panel and noted that the panel had placed a great deal of weight on the Registrant's personal mitigation and on her insight. On the basis of the charges before them this was not unreasonable.
- 9.6 The Members considered, on balance, that the caution order was within the reasonable range open to the Panel, given the evidence that was put before it.

Was there an error in focusing the allegations on the three job application forms when there was further evidence including arguably 12 other job applications and the full interview transcript?

- 9.7 The Members noted that the HCPC had available: 15 job application forms in which the registrant had provided misleading information; the transcript of the investigation meeting between East Riding of Yorkshire Council; the Registrant's Fitness to Practise history; and the statements made to the review Panel in relation to this case. It also noted that some of the statements made by the Registrant to the Panel were contradicted by this evidence. The Members considered that this evidence contained a number of untruths made by the Registrant in both oral submissions and written declarations.
- 9.8 The Members considered that this evidence was material to the Registrant's conduct and the full picture should have been put to the Panel. The Members noted however, that it was right that the evidence was not provided given the allegations brought by the HCPC. The Members considered that the allegations should have been significantly wider to reflect the full evidence available to the HCPC.

- 9.9 The Members considered that there was an error in limiting the allegations. There was clear evidence in the papers (that was not before the Panel) that should have amounted to further allegations being raised in this case.

Would the outcome be different if the further evidence had been presented to the Panel?

- 9.10 The Members noted that if the Panel had found proved further allegations of dishonesty, this might have made a material difference to an assessment of the risk of repetition and to the sufficiency of the Registrant's insight. Further, the repeated pattern of dishonesty might have called into question the conclusion in relation to a deep-seated attitudinal problem.
- 9.11 The Members considered, as stated above, that there is evidence that the Registrant's dishonest acts and omissions were wide ranging beyond those set out in the allegations. The failure to raise the allegations was a procedural irregularity.
- 9.12 The Members considered that had further allegations been raised to fully reflect the evidence available to the HCPC then the outcome could have been significantly different. The Members concluded therefore that the case against the Registrant was undercharged.

Conclusion on insufficiency

- 9.13 The Members were concerned that the severity of the Registrant's dishonest conduct was not placed before the Panel. Dishonesty is serious and goes to the heart of public confidence in the profession. While it might well be that, in the absence of concerns about the registrant's clinical practice, the decision did not raise public protection concerns, the decision did not appear to be sufficient to uphold professional standards or maintain public confidence in the regulation of the profession. The Members therefore considered that the decision was not sufficient to protect the public.

10. Referral to court

- 10.1 Having concluded that the panel's Determination was insufficient to protect the public, 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 account the need to use the Authority's resources proportionately and in the public interest.
- 10.3 The Members considered that the reasonable and informed observer would be concerned that the Panel were not provided with the entirety of the evidence

and that the Registrant continued to behave in a dishonest manner at the review hearing and at the investigation by the Council.

- 10.4 Taking into account those considerations, asking with 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.

A. Clamp

Alan Clamp (Chair)

11/2/19

Dated

12. Annex A – Definitions

12.1 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 the Health and Care Professionals Tribunal Service.
The Registrant	Deborah Johnson
The Regulator	Health and Care Professions Council
HCPC	Health and Care Professions Council
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 28- 29 November 2018
The Court	The High Court of Justice of England and Wales
The Code	The HCPC's <i>Standards of Conduct, Performance and Ethics</i>