

# Section 29 Case Meeting

13 April 2017

157-197 Buckingham Palace Road, London SW1W 9SP



## *Members present*

Antony Townsend (in the Chair), Board Member, Professional Standards Authority  
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority  
David Gomez, Assistant Director of Scrutiny and Quality (Legal), Professional Standards Authority

## *In attendance*

David Bradly of counsel, 39 Essex Chambers (attendance by telephone)

## *Observers*

Remi Gberbo, Lawyer, 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*<sup>1</sup>).

#### **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 [REDACTED].

#### **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, Bundle and Exhibits of the hearing [REDACTED]
- Counsel's Note dated [REDACTED]
- The Authority's Section 29 Case Meeting Manual

#### **8. Background**

8.1 The allegations arose from the Registrant's period of employment as a Social Worker at [REDACTED] ('the Council) between [REDACTED]

8.2 In [REDACTED], an audit identified concerns regarding the Registrant's provision of Social Work support to a looked after child, (Service User A) whom had placed a ligature around his neck with a view to ending his life. A disciplinary investigation ensued and an audit was undertaken of further case

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<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

files of child service users for which the Registrant had responsibility. Additional concerns about the Registrant's social work practice were identified.

- 8.3 The matters alleged related to the Registrant's failure to visit Service User A in a timely manner (having been notified of the incident of self-harm); failure to arrange a risk assessment; failure to seek advice from line management; and failure to maintain accurate records.
- 8.4 The allegations in relation to 13 other service users included: failure to action decisions made regarding support for looked after children; failure to undertake statutory visits in relation to looked after children; failure to provide support; failure to evaluate risk; failure to carry out agreed actions in a timely manner; and failure to maintain adequate records. It was further alleged that the Registrant had inappropriately retained confidential information in relation to 36 service users (including financial documents, original birth certificates, a passport, school reports and needs assessment and other documentation) at her home.
- 8.5 Additionally, it was alleged that the Registrant had practised between [REDACTED] [REDACTED] without being registered as a social worker.
- 8.6 The Panel found that the facts proved amounted to misconduct, and judged the Registrant's fitness to practise to be impaired by reason of that misconduct. The panel imposed an order for [REDACTED]

## **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:

### ***The HCPC's Investigation***

- 9.1 The Members noted that it was the Legal Assessor who had identified the absence of evidence in support of the allegation that the Registrant had practised as a Social Worker whilst not registered with the appropriate regulator between [REDACTED] and that the HCPC had failed to adduce a witness statement on the content of its registration records. The Members observed that the HCPC was the sole source of the evidence regarding the Registrant's registration status and considered that, but for the intervention of the Legal Assessor, there was a likelihood of the panel concluding that there was insufficient evidence upon which to find the allegation proved.
- 9.2 The Members concluded that notwithstanding the inadequacies in the investigation and presentation of the case, this was not material to the Panel's consideration and disposal of the case.

### ***The Sanction Decision***

- 9.3 The Members were of the view that the proven failings in the Registrant's social work practice were widespread and very serious, involving vulnerable child service users. Whilst recognising that the apparently dysfunctional environment in which the Registrant had practised may have been relevant mitigation in

relation to her social work failings, it did not diminish her duty to service users and did not excuse her decision to practise without registration. Members considered that the Panel had placed undue weight on the Registrant's working environment.

- 9.4 The Members considered that the system of registration was fundamental to statutory regulation; it was designed to ensure public protection. The Members noted that the Panel had failed to address the significance of the Registrant having practised for [REDACTED] as a social worker without being registered during which time there would have been no assurance of her compliance with CPD requirements. Members considered that the Panel had failed to attach sufficient weight to the need to maintain public confidence in the system of regulation of social workers.
- 9.5 The Members were concerned that the conclusion that the Registrant's actions were 'neither reckless or calculated' was inconsistent with its earlier findings. Given that the registrant had not attended the proceedings and had not fully engaged with the process, Members considered that the Panel should have provided fuller and more detailed reasons for its conclusion that a striking off Order would be 'disproportionate to the impairment' and the expectation that a period of [REDACTED] would allow the Registrant 'an opportunity to engage with the regulatory process'.

#### **Conclusion on insufficiency for public protection**

- 9.6 The Members were of the view that the Registrant's decision to practise without registration, coupled with her failure to engage with the regulatory process and the wide-ranging and serious failings in her practice as a social worker was demonstrative of an attitudinal concern that was incompatible with practice and for which therefore strike off was the most appropriate sanction. The Members considered therefore that the decision to [REDACTED] was wholly unsatisfactory.
- 9.7 The Members concluded that the outcome was insufficient for the maintenance of public confidence in the profession and insufficient for the maintenance of professional standards and conduct for members of the social work profession.

#### **Referral to court**

- 9.1 Having concluded that the Panel's Determination was insufficient for public protection, the Members then considered whether they should exercise the Authority's discretion to refer this case to the relevant court.
- 9.2 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.
- 9.3 The Members decided that the Authority ought not to exercise its discretion to refer the matter to the relevant court.
- 9.4 In reaching this view, the Members noted that the Registrant was [REDACTED] during which time the health, safety and well-being of the public would be sufficiently protected. It was noted that [REDACTED] is subject to mandatory review and that the Registrant would be required to



**11. Annex A – Definitions**

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

<b>The Authority</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	The Conduct and Competence Committee of the Health and Care Professions Council
<b>The Determination</b>	The determination of the Panel dated [REDACTED]
<b>The Registrant</b>	[REDACTED]
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The Authority as constituted for this Section 29 case meeting
<b>The ISG</b>	The Indicative Sanctions Guidance of the Health and Care Professions Council
<b>The HCPC</b>	The Health and Care Professions Council