

Section 29 Case Meeting

29 July 2021

157-197 Buckingham Palace Road, London SW1W 9SP



Rekha Sarker Bennett

Members present

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority
Simon Wiklund, Head of Legal, Senior Solicitor Professional Standards Authority
Mark Stobbs, Director of Scrutiny and Quality, Professional Standards Authority

In attendance

Alexis Hearnden of counsel 39 Essex Chambers

Observers

Michael Hannah, Scrutiny Officer, Professional Standards Authority
Melanie Venables, Head of Accreditation, Professional Standards Authority
Briony Alcraft, Scrutiny Team Co-ordinator, Professional Standards Authority

This meeting was held virtually in light of the current pandemic.

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 Counsel 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 3 August 2021.

6. The relevant decision

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on Friday 28 May 2021.

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 28 May 2021
- The Authority's Detailed Case Review
- Transcripts of the hearing dated 15 February 2021 – 19 February 2021 and 24 May 2021 – 28 May 2021
- Counsel's Detailed Case Review dated 21 July 2021
- The Panel's hearing bundle
- The hearing exhibits
- The Registrant's hearing bundle
- The hearing supplemental bundle

¹ CRHP v Ruscillo [2004] EWCA Civ 1356

- The service bundle for the final hearing
- Submissions for resuming final hearing
- The Health and Care Professions Council's Standards of Conduct, Performance and Ethics (2016)
- The Social Work England's Sanctions Guidance last updated 26 November 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 Regulator to the Authority'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

8.1 The Registrant was employed as Social Worker at Birmingham City Council.

8.2 On 19 December 2018, at Birmingham Crown Court, the Registrant was convicted of seven counts under the Immigration Act 1971. The convictions related to steps taken by the Registrant to secure entry into the UK for a child from Bangladesh which involved dishonest statements, false documents and false evidence before a First Tier Tribunal. The Registrant admitted the offences and was sentenced to eight months in prison.

8.3 The matter came before the Panel in February 2021. The allegations were that the Registrant had been convicted of seven counts under the Immigration Act 1971 and, by reason of those convictions, their fitness to practise was impaired. In addition, it was alleged that the Registrant had committed misconduct in being dishonest, in that they had falsified a document and submitted it as a death certificate for a relative of the child from Bangladesh; and, that they had held data of service users on their personal computer without consent from service users or permission from their managers; and their fitness to practise was therefore impaired.

8.4 The Panel found proved that the Registrant had been convicted of seven counts under the Immigration Act 1971, and that the Registrant had falsified a document and submitted it as a death certificate; however, it was found not proved that the Registrant had held data of service users on their personal computer without consent from service users or permission from their managers. The Panel determined that, by reason of the convictions and dishonestly falsifying and submitting a document, the Registrant's fitness to practise was impaired and suspended the Registrant's practice for 12 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:

Whether the sanction imposed by the Panel is sufficient considering the seriousness of the Registrant's actions and the Panel's assessment of the Registrant's insight.

- 9.3 The Members were concerned by the Panel's approach to how serious the Registrant's actions were. In particular, the Members considered whether the Panel gave enough consideration to whether the Registrant's actions were fundamentally incompatible with being a Social Worker.
- 9.4 The Members felt that the Panel did not consider in enough depth whether there is a link between the dishonest misconduct found proven and the work that the Registrant undertakes as a Social Worker.
- 9.5 The Members noted that the Registrant's misconduct included taking dishonest steps with the intention of subverting the immigration and legal process; however, the Panel did not give clear consideration to the fact that, in their professional life as a Social Worker, the Registrant will regularly be called upon to give evidence during a legal process as a trusted expert and, therefore, that intentionally subverting the immigration and legal process compromised the essential trust that the courts had in social workers, even though that misconduct happened in the Registrant's personal life.
- 9.6 The Members considered that, if the Panel had given greater consideration to this link between the Registrant's behaviour and their profession, it could have concluded that such behaviour was fundamentally incompatible with being a Social Worker and decided that removal from the register needed serious consideration.
- 9.7 The Members were also concerned about the Panel's assessment of the Registrant's insight. They noted that the Panel concluded that the risk of repetition was low, but that the Registrant's insight into their misconduct was limited. The Members were concerned that the Panel did not appear to consider the risk of similar misconduct such as dishonesty occurring in the Registrant's professional life in the future, outside of the particular circumstances relating to the child, particularly given the lack of insight demonstrated by the Registrant.
- 9.8 The Members considered that, while there was some insight, considerable time had passed since the offences were committed and the criminal proceedings and the Registrant could have displayed significantly more insight and remediation in that time. Further, the Members felt that the Panel should have assessed whether the dishonest misconduct suggested that there was an attitudinal concern. Had the Panel given weight to such considerations, in the Members' opinion, it may have reached a different conclusion on the risk of repetition, which may, in turn, have led to a different sanction. The Members felt that that the Panel placed too much weight on the Registrant's apparently benign motive as opposed to the attitudinal concerns.
- 9.9 In relation to removal from the register, the Members did not consider that that the Panel gave sufficient reasons as to why it considered that removal would be disproportionate. Whilst acknowledging that a determination does not need to be a complete and perfect statement of reasons, the Members concluded that

the Panel's simple statement that removal would be disproportionate did not adequately address the very serious concerns about the misconduct. Nor did it address the question as to whether, in fact, the Registrant was likely to fully remediate their misconduct in the 12-month period of suspension.

Conclusion on insufficiency for public protection

- 9.10 The Members concluded that the Panel's decision to impose a 12 months' suspension order was insufficient for public protection because: the sanction did not reflect the link between the misconduct and the Registrant's work as a Social Worker; it did not address the question of whether the misconduct was fundamentally incompatible with being a Social Worker; it did not address the question of whether the Registrant's limited insight amounted to an attitudinal problem and whether, in fact, further insight was likely to develop; and the Panel's reasons did not properly state why it thought the risk of repetition was low and why a removal order was disproportionate.

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. They also considered comments from Social Work England.
- 10.3 The Members noted their view that the panel gave insufficient consideration to the nature of misconduct going to the heart of the Registrant's profession and any attitudinal failing. Further, the Members considered that dishonest engagement with statutory bodies and legal processes is a very serious professional misconduct finding, whether or not that finding relates to the Registrant's personal life. The Members did not identify any alternative means to secure public protection in this case.
- 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)

20/8/21

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 Committee of the Social Work England
The Registrant	Rekha Sarker Bennett
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 Authority as constituted for this Section 29 case meeting
The Determination	The Determination of the Panel sitting on 15 February 2021 – 19 February 2021, 24 May 2021, and 27 May 2021 – 28 May 2021
The Court	The High Court of Justice of England and Wales
The Code	The Health and Care Professions Council's Standards of Conduct, Performance and Ethics (2016)
The SG	Social Work England's Sanctions Guidance last updated 26 November 2019