The State of Regulation: Social Work and the Health and Care Professions Council

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Three Stage Investigation

- 1) The State of Regulation in England: From the General Social Care Council to the Health and Care Professions Council
- 2) Fit to Practise or Fit for Purpose? An analysis of the Health and Care Professions Council’s decision-making process in relation to social workers brought before a ‘Fitness to Practise’ hearing.
- 3) A Subject of Concern: The experiences of social workers referred to the Health and Care Professions Council

1) Published in the BJSW 2015 advance access online
2) Submitted to Ethics and Social Welfare, required revisions, resubmitted November 2016, awaiting decision
3) Forthcoming in BJSW.
The Trilogy Explained

- Paper One: An analysis of the way in which social work, as a profession, has coped with and responded to the various forms of regulation to which it has been subject in England.

- Paper Two: An exploration of cases in which there may have been organisational inadequacies but nevertheless saw the social worker referred to the HCPC and subsequently brought before a fitness to practise panel.

- Paper Three: An analysis of the findings from interviews with social workers who were referred to the HCPC for practice issues.
In 2014/15 there were 2,170 cases in total referred to the HCPC for ‘Fitness to Practise’ concerns,

1,251 involved social workers (approximately 58% of the total).

Of the 1,251 - 293 were referred to the HCPC by an employer and 696 were referred by members of the public.

Of all referrals made by the public to the HCPC regarding the professions it regulates, 70% related to a social worker, probably reflecting the often contentious nature of the social work role in navigating the public/private divide.

Overall, 1.42% of registered social workers were the subject of some concerns, more than any other profession, the next highest being paramedics (1.09%).

Social work does, however, have most cases closed at the initial information gathering stage without further referral to the Investigating Committee (614/59%).
Fitness to Practise Outcomes

- From 1st April 2014 to 31st March 2015
- 155 social workers went before the ‘Investigating’, Conduct and Competence’ or ‘Health’ Committees of which:
  - 23 were struck off the HCPC register;
  - 28 received a caution; 12 had conditions of practice;
  - 4 had no further action;
  - 33 were suspended;
  - nine cases were discontinued;
  - 36 allegations were judged to be not well founded;
  - 1 was removed from the register for an incorrect/fraudulent application
  - and 9 were removed by consent (HCPC, 2015b).
Our search of the HCPC website revealed ninety-three cases involving social workers at ‘final’ FTP hearing (66 struck off; 22 cautions or conditions of practice; and 5 that resulted in a finding of ‘No Further Action’). (from 1st August 2012 – 31st December 2014).

We each looked briefly at the ‘notice of allegations’ made against the 93 social workers and made an individual decision as to whether or not we thought they met the criteria for further analysis.

The three of us then met to compare our decisions and discuss any anomalies before making a final decision.

This resulted in 34 of the 93 cases being included for further analysis (21 struck off, 6 cautions, 3 conditions of practice and 4 No Further Actions).

The reason why the fifth NFA was not included was due to no details of the case, apart from the registrant’s name and hearing outcome, being available on the website.
Of the 21 registrants struck off, 10 were female and 11 male, a surprisingly marked difference to the broader social work population which tends to be around 80% female.

In the 18 cases where a reasonable inference could be made, the length of service was an average of 15 ½ years. This dropped to just under 10 years for those given conditions or cautions – but rose to 13 ¾ years for the NFA cases.

None of the 21 ‘struck off’ registrants we looked at either attended or were represented.
General Findings

- In relation to areas of professional practice, in the 34 cases we looked at, 63% of the social workers referred to a Fitness to Practise hearing were from Children and Families teams (this proportion rises to 76% of the cases eventually struck off).
- Mental Health was the next highest area (21%),
- with Adults (10%) and Youth Offending (6%) both relatively less well represented.
Themes

- From the 34 cases that we analysed three distinct themes emerged:
  1. The HCPC panel’s opinion as to whether the registrant was a ‘credible’ or a ‘non-credible’ witness was a significant factor in its decision on sanction.
  2. The outcome of the hearing was not always dependent on the perceived seriousness of the registrant’s misconduct or competence.
  3. Where organizational issues were identified and were believed to have contributed to the Registrant’s poor performance, they were not further explored by the HCPC.
Paper Three: Interviews

- Placed advert in Community Care
- Semi-structured interviews with eight respondents (F2F or by telephone)
- Of the eight social workers we interviewed three were found to have No case to answer/No further action, a further three received either a caution/warning/or conditions of practice, and two were struck off the HCPC register.
Main Themes

- Three *main* themes to emerge from the data were:
  - organisational issues;
  - representation and cost;
  - and emotional toll
Organisational Issues

- Conflict with management
- Practice issues
As noted, legal representation helps in achieving a favourable outcome/less severe sanction for registrants facing misconduct/fitness to practise concerns (McLaughlin, 2010; HCPC, 2015).

However, this can be a costly endeavour with three of our participants spending between £5000–£15,000 on legal fees.

Further expenses also incurred e.g. travel/accommodation; possible loss of wages (for both the Registrant and their witnesses and/or support).

A Right of Appeal?
Non-attendance/Disengagement

- Amal had had legal representation initially but because she was out of work she ‘couldn’t afford to keep paying the fees’ so she dropped the legal representation. Because she felt she would not win without it, she eventually stopped going to the hearings:

- “It was just, because I was already stressed about it I just kind of blocked it out kind of thing. It was just easier to do that and then the cost, I just couldn’t, so yeah, so when I could have challenged some of those things and me being, would it have even made much difference”.
Some felt that legal expertise also prevented registrants from becoming too emotionally involved and thus compromising the hearing. For example, Liam said:

I would have been too, still too angry, and if I’d had to deal with it myself...and so it was really important that I got someone to deal, to stand between me and them [the organisation] because otherwise I would have been unfocussed.....(Liam)
FTP Panel’s Knowledge of Social Work

- Three of our participants questioned the FTP Panel’s knowledge of social work.

- For example, when Alisdair tried to demonstrate that he had kept up with his practice knowledge by attending a Community Care Live event, a well-known and established social work conference,

- “no-one [on the FTP panel] seemed to know what the Community Care Live event was”.

- Similarly, Ann, who implied that the social work member of the panel was long past retirement age, felt:

- “..the panel did not appear to understand what social workers did, they didn’t even understand what a contact centre was …. you feel you’re being judged by people that really have no clue of what we’re dealing with day to day....” (Ann)
Referral as Policy

- According to Ann, in her local authority “it is their policy for anybody who’s been dismissed, no matter for what, they refer to the HCPC”.

- Megan, suggested that this policy of referring everything was due to the Local Authority “lacking confidence in their own abilities”.

- “…. I don’t think they understand how to manage people hence why it was a very oppressive way of managing and, and I just think they just said ‘Oh well, send it over to the HCPC, they’ll deal with it’”. (Megan)
Emotional Costs

- It was [laughs], I was like, I couldn’t believe it, it was like waking up to a nightmare... (Amal)

- ...I was done, I was really, I was broken, I was absolutely broken (Florence)

- ...it’s had an impact, especially with my lupus it’s, because stress triggers and yeah, quite ill, quite, it’s had a really big impact emotionally, mentally, health wise and obviously financially as well... (Amal)
Suicidal thoughts and attempts

- Of the eight respondents interviewed, five informed us that they had either attempted suicide or had suicidal thoughts.

- “… I knew it would be a public hearing and I had got it into my head that all my colleagues would be there and I didn’t want, I got frightened, don’t know why, that was paranoia because all that time I was so stressed, this is the bit that gets hard [starts to cry], I was suicidal, I was suicidal”. (Florence)

- “I became depressed very, very quickly and… I just didn’t know what to do. I was, I was just bereft really… This is my, this is my professional livelihood, it’s my life and at that point I was, I mean I’d, I’d actually attempted suicide…” (Megan)
Return to Practice?

- The fear of making another ‘mistake’ and being reported once again to the HCPC was a common theme and led to defensive techniques being implemented or to participants changing role completely:

- “I probably never will get over it because I’m always terrified if I step out of line or do something wrong that is, that my manager, is going to report me to the HCPC again because I know I could never go through that again”. (Florence)

- “At this stage I can’t do it …I can’t do this shit no more… you know, dealing with that stuff day in, day out is extremely difficult”. (Liam)

- “…I can’t do frontline work now.. and in part that’s why I asked to do that [professional development] role because I need to step away from frontline….I’m still terrified of making a mistake”. (Megan)
Conclusion/Recommendations

- The HCPC (or its replacement) should exert more pressure on referring organisations to provide the required information for proceedings to be expedited in a more timely manner.

- Need for support, not only from the HCPC and their own organisation, but also from having the opportunity to contact other registrants who are in a similar position. An advice/support group could be created by linking social workers to an online network which registrants could join on a voluntarily basis.

- To practise as a social worker, social workers must pay to be registered with the HCPC with their registration fees used by the HCPC to pursue cases against them. If these fees were also made available for social workers to contract appropriate legal representation, a more level playing field could be established financially.

- Route to pursue organisational failings needed.
Outcomes

- Support Group set up

- Meeting arranged with Isabelle Trowler and DoE (published and draft papers forwarded to them)

- Legal academic joined us to work on paper(s) re legal/practice implications and attending meeting at the DoE

- Conference/Symposium took place in February 2017 at the University of Sheffield