

Social workers under the spotlight: An analysis of fitness to practise referrals to the regulatory body in England, 2014-16

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Abstract

This article examines the nature of, and reasons for, the disproportionately high rates of fitness to practice referrals of social workers in England to the Health and Care Professions Council (HCPC), compared with other professions regulated by HCPC during 2014-16. In 2014-15, the rate of referrals for social workers was 1.42% of registrants, compared with an average for the 16 professions regulated by HCPC of 0.66%.

Drawing on published statistics and unique analysis of a sample of 232 case files undertaken as part of a research project in 2016-17, the article highlights relatively high rates of inappropriate referrals from 'members of the public' (mainly service users) particularly in relation to child placements and contact. A detailed picture is offered of the variety of referrals dealt with at each stage of the fitness to practice process (from initial triage to final hearings), with recommendations for how to prevent inappropriate referrals, whilst focusing concern on the most serious cases of incompetence and misconduct.

This research is of significance at a time of increasing pressure for social workers, social services and service users under conditions of austerity and managerialism; on-going concerns about standards in social work; and recent changes in social work regulation.

Key words: fitness to practise, Health and Care Professions Council, professional regulation, social workers

Introduction

This article is framed between two apparently contradictory concerns. The first is the public concern (most frequently expressed and exaggerated in the media) that social workers are too powerful; can damage people's lives, especially those of families and children; and often lack practical and moral competence (see, for example, *The Telegraph*, 2009; Kelly, 2013). This fuels arguments for strong, independent regulation. The second is the concern within the profession, most visibly expressed

by social work academics, that the statutory regulatory regime has a tendency to blame organisational failings on individual practitioners, who are ill-equipped to defend themselves against the regulator's well-resourced legal and bureaucratic machine (Furness, 2015; Kirwan and Melaugh, 2015; McLaughlin *et al.*, 2016; Leigh *et al.*, 2017; Worsley *et al.*, 2017).

Of course, expressed in polarised form, this tension does little justice to the complexities and nuances of the roles and practice of social workers or the regulatory body. This article aims to explore in depth the extent and nature of fitness to practise referrals to the regulatory body about social workers in England, considering why and how referrals arise, whether they are justified and any lessons for the profession and regulator. We draw on empirical research conducted during 2016-17. This included a unique, in-depth examination of 232 case files relating to referrals dealt with at all stages of the fitness to practise process during 2014-16 by the Health and Care Professions Council (HCPC), the regulator of social work in England. Hitherto research in this field has relied on published summaries of final hearings and tribunals, which are limited in the details of the cases and decisions made.

Before discussing the research, we briefly consider the background to regulation of social work in the UK and England.

The regulation of social work

The regulation of social workers has been a contentious issue since it was mooted in the early 20th century and re-considered in the 1980s, continuing to provoke debate following its implementation with the establishment of Care Councils in the four countries of the UK in 2001 (McLaughlin *et al.*, 2016; Parker, 1990). Debates in the 1990s often centred on the implications of statutory regulation for professional autonomy, while current concerns question whether individual social workers are being blamed for organisational failings in employing agencies.

Having finally achieved professional registration, regulation and then protection of title (in 2005), it surprised many stakeholders when the government announced in 2010 that professional regulation of social workers in England would be transferred from the General Social Care Council (GSSC) to the then Health Professions

Council (HPC) (Dunning, 2010). Scottish, Welsh and Northern Irish Care Councils remained unchanged. This decision followed a review of 'arms-length' government-funded bodies (DH, 2010). HPC was independent of government, funded through fees charged to registrants. It had a well-developed system for regulating 15 smaller, mainly health-related professions (from physiotherapists to radiographers), based on standard-setting, accreditation of education and assessing registrants' fitness to practise against agreed standards of conduct as well as competence (Cromarty, 2016, p. 24). In contrast, GSCC regulated only against standards of conduct (DH, 2010).

The influx of social work registrants in 2012 into the re-named Health and Care Professions Council more than doubled referrals in 2013-14, with social work accounting for 1085 of the total of 2069. Social workers were held to account against generic standards of conduct, performance and ethics applicable to all 16 professions (HCPC, 2012), and profession-specific standards of proficiency (HCPC, 2017). The latter were co-produced with a working group drawn from child and adult social work practice, management, unions and academia, and subject to a public consultation. This was the first time social work standards of proficiency (or competence) had been created for all aspects of practice. Some commentators at the time argued that HCPC lacked expertise in, and understanding of, social work, with fitness to practise panels at final hearings only having to comprise one qualified professional out of a panel of three (McLaughlin et al., 2016, p. 833), the standard approach adopted for all HCPC regulated professions.

In 2016, the government announced that social workers in England would be regulated by a new profession-specific body. Reasons were less about failings on the part of HCPC as a regulator, and more about the perceived need for a social work-specific regulatory body to tackle on-going concerns about social work standards, public credibility and professional identity. Lessons from our research are particularly timely, therefore, as Social Work England, the new body, prepares to take over in 2019-20 (<https://socialworkengland.org.uk/>).

The fitness to practice process

HCPC has four roles in relation to the professions it regulates: keeping a register of practitioners who meet the required standards; setting standards for education and training; approving educational programmes that prepare practitioners for registration; and taking action when registrants do not meet required standards. This last function concerns us here, requiring HCPC to ensure, as far as possible, that registrants are 'fit to practise', that is, they have the necessary knowledge, skills and character to practise safely, effectively and ethically. When a registrant is judged not to meet the required standards, then service users, employers, colleagues or others can make a 'fitness to practise' referral to HCPC. Sometimes these are called 'complaints', however, we will largely use the terms 'referrals' or 'concerns', following HCPC practice. This takes account of the fact that some practitioners refer themselves to HCPC (for example, if they have committed offences or believe their employer will not deal with them fairly) and some third party referrals are not properly formulated as complaints. Hence the term 'concern' is broader and less judgemental.

Fitness to practise cases dealt with by HCPC relate to many concerns, including: dishonesty; exploitation and inappropriate relationships with service users; disrespect for rights; causing harm; engagement in activities that undermine public confidence in the profession; lack of competence; and health issues. Criminal offences referred to HCPC include fraud, theft, assault, alcohol, drug and sexual offences (HCPC, 2018).

Social work referrals compared with other professions

Of the 16 professions regulated by HCPC during 2014-15, social work received the highest rate of fitness to practise concerns relative to the number of social workers on the register. The rate of referrals was 1.42% compared with an average of 0.66% for all 16 professions (HCPC, 2015). The second highest rate of referrals in 2014-15 was for paramedics at 1.09%. The disproportionately high rate of concerns lodged against social workers and paramedics led HCPC to commission research on this topic in 2016, on which this article draws. Here we focus specifically on social workers (for details of findings about paramedics see Gallagher et al., 2018; Lucas et al. 2019; van der Gaag et al, 2018).

Taken at face value, one interpretation of the referral rates might be that social workers display relatively high levels of incompetence and unethical conduct, confirming prevailing negative public views of their performance and moral character. However, if we look at other professions in the healthcare field outside the remit of HCPC, we find that the referral rate of 1.42% for social workers was significantly lower than that for doctors (3.6%) and dentists (2.9%) in 2014-15 (calculated from GMC, 2016, ps 27, 29, 30). Our research enables us to paint a more nuanced picture of social work fitness to practise referrals. The statistics for social work can be accounted for partly by high rates of concerns raised by members of the public (including service users) that did not meet HCPC standards of acceptance and were therefore not pursued further – never reaching a final hearing. In 2014-15, 57.6% of new referrals to HCPC were about social workers, while social workers comprised only 44.1% of registrants sanctioned at final hearings and 37.1% of registrants struck off in that year (calculated from HCPC, 2015). While many people sanctioned or struck off in 2014-15 would have been referred in 2013-14, these figures are a relatively accurate picture of the ratios of referrals to sanctions/striking off (which follow a broadly similar pattern in 2015-16).

Methodology

This article focuses largely on findings from analysis of a sample of HCPC fitness to practise cases relating to social workers. This was part of a larger study, examining reasons for disproportionately high numbers of referrals of paramedics and social workers. It included a literature review, interviews and focus groups with key stakeholders and a Delphi study to gain opinions of international experts (van der Gaag et al, 2017). Ethical approval was given by the University of Surrey.

For the case analysis, three members of the research team were given on-site, supervised access to HCPC's case management system, containing records associated with each fitness to practise referral. The researchers kept all personal details anonymous, and HCPC checked the final report to ensure no information that should have been kept confidential was revealed. The study is obviously limited by confidentiality considerations and oversight by HCPC, but no requests for removal of any data relating to cases was made and the presence of an HCPC staff member on the advisory group was beneficial in enabling dialogue and greater understanding

about HCPC processes. A structured random sample of just over 10% of social worker cases (n=232) dealt with between July 2014 and August 2016 was selected. The sample was organised according to the stage of the fitness to practice process at which the cases were dealt with and then according to the source of referrals, to reflect the proportion of all cases in each category as follows:

- *Initial stage* (173 cases) – members of the case reception and triage team determine whether a referral meets the standard of acceptance for further investigation. This requires there to be enough information to identify the registrant and for them to respond; and sufficiently ‘credible’ evidence for a reasonable person to consider the concerns believable (HCPC, n.d.). This stage usually involves contacting the referrer and, if appropriate, the employer for further information.
- *Investigating Committee Panel* (ICP) (28 cases) – a panel is convened to assess the evidence and decide if there is a case to answer (whether there is a realistic prospect of HCPC proving that fitness to practice is impaired), and if so, the case progresses to a final hearing.
- *Final hearing* (FH) (31 cases) – after instructing solicitors and gathering evidence, HCPC brings the case to a three-person panel, which decides: whether the facts are proven on the balance of probabilities (civil standard of proof); whether the facts amount to misconduct or lack of competence; whether the person’s fitness to practise is impaired; and if so, what sanction to apply.

Although using a 10% sample means some unique or interesting cases would not be analysed, by taking a period of two years and structuring the sample according to the number of cases at each stage of the process we aimed to get a representative picture of the range of cases. Case notes for the 232 referrals were reviewed and key characteristics recorded, with the circumstances of each case noted as a brief narrative. This dataset was analysed using basic cross tabulation for quantitative data (characteristics of referrers, registrants and allegations) and detailed coding of qualitative data (correspondence, transcripts of hearings and other case records) based on thematic analysis following the principles of Braun and Clark (2006). The latter resulted in the creation of a detailed typology of the fitness to practise concerns (shown in Table 4) within which to frame our discussion of reasons for referrals and

responses by the regulator (for more details of the methodology see van der Gaag et al., 2017).

Findings: the overall picture

Quantitative analysis of the sample of cases gave insight into the characteristics of the people referred, by whom and the main allegations made. Two features are noteworthy. Firstly, men were over-represented, constituting 31% of the sample, compared with a figure of approximately 20% of social workers on the register. Second, those employed in children and family services formed the majority of referrals (69%), compared with adult social work (16%) and mental health social work (10%). This is significantly higher than the proportion of registered social workers employed in this field. Although exact numbers are unavailable, only about one third of registered social workers in England were employed in local authority children and family services in 2016 (this obviously excludes those employed in Cafcass, the voluntary and private sector,

www.gov.uk/government/statistics/childrens-social-work-workforce-2016)

Examining the source of referrals in the sample (Table 1) shows just over half (56%) made by service users or members of the public (frequently family members or friends of service users). This is much higher than for the 15 other HCPC-regulated professions (average 32%, calculated from HCPC, 2015, p. 11). However, service user and member of the public referrals together comprised 70% of referrals closed at the initial stage, and 25% of those closed at the ICP stage, with only one referral at the final hearing stage (3%). Employer referrals follow a reverse pattern, constituting 10% of referrals closed at the initial stage, 43% closed at ICP stage, and 68% of referrals that made it to final hearing.

Table 1: Source of referral in sampled cases at each stage of the process

	% initial stage n=173	% ICP n=28	% FH n=31	% at all stages n=232
Service user	35	18	0	28
Public	35	7	3	28

Employer	10	43	68	22
Self-referral	9	25	16	12
Other sources	12	4	12	8

HCPC case managers recorded the characteristics of each referral in the case notes. Our analysis showed that the majority related to misconduct (45%) or misconduct with lack of competence (44%) (see Table 2).

Table 2: Referral characteristics of sampled cases

	% of cases n=232
Misconduct	45
Misconduct and lack of competence	44
Lack of competence	6
Conviction/caution	3
Health	1

A significant sub-category of misconduct and lack of competence referrals related to disputes with family members over place of residence and contact with children. Many comprised complaints against multiple social workers lodged simultaneously - in one case 14 social workers. Of the 77 cases in this category (33% of the overall sample), 70 were closed at the initial stage, meaning they were not pursued further. These accounted for 40% of all cases dealt with at this initial stage, with a significantly lower proportion of this type of referral dealt with at the ICP stage (21%) and at final hearings (3%) (Table 3).

Table 3: Child residence and contact referrals dealt with at each stage

% Initial stage n=173	% ICP n=28	% FH n=31	% Total n= 232
40	21	3	33

Following the quantitative analysis, a more detailed qualitative analysis of case notes was conducted to outline a typology of referrals considered at each stage (Table 4).

Table 4: Descriptions of sampled cases dealt with at each stage

Stage of investigation	Summary of case description
<i>Initial stage</i>	
	<i>Competence and performance (120)</i>
	<ul style="list-style-type: none"> • Inaccurate/inadequate assessments/reporting (70) • Inadequate care/knowledge (50)
	<i>Conduct (52)</i>
	<ul style="list-style-type: none"> • Disputes within teams or with managers (12) • Convictions/cautions (8) • Allegations of a sexual nature (8) • Dishonesty (7) • Breach of confidentiality (6) • Interpersonal/communication issues (5) • Disputes with students (4) • Registration issue (1) • No specific allegation (1)
	<i>Health related (1)</i>
<i>ICP stage</i>	
	<i>Competence and performance (14)</i>
	<ul style="list-style-type: none"> • Inaccurate assessment/reporting (10) • Inadequate care (2) • Administrative failings (2)
	<i>Conduct (14)</i>
	<ul style="list-style-type: none"> • Interpersonal/communication issues (9) • Breaches of confidentiality (3) • Dishonesty (1) • Registration issue (1)
<i>Final Hearing</i>	
	<i>Conduct and behaviour (12)</i>
	<ul style="list-style-type: none"> • Dishonesty - financial • Dishonesty – conflicts of interest • Conviction/caution • Drug and alcohol related
	<i>Competence and performance (18)</i>
	<ul style="list-style-type: none"> • Breaches of confidentiality • Serial failures of assessments, care, record keeping, meeting deadlines • One off failures
	<i>Health (1)</i>

We now consider details of the cases dealt with at each stage. To illustrate the nature of the cases, we offer several case examples summarised from the files.

Findings related to cases closed at initial stage

The majority of referrals to HCPC are closed at the initial stage as they do not meet the standard of acceptance. In many of the sampled cases, the person making the referral did not respond to requests for further information, or if they did, the nature of the concern expressed was not deemed relevant to the social worker's fitness to practise and/or it was judged that it should be dealt with by the employer or another body.

Competence and performance

The majority of referrals closed at the initial stage were made by service users, their family members or members of the public.

Inaccurate/inadequate assessments/reporting

In this subset of cases, 59 (of 70) related to child residence and contact. Typically, family members or foster parents were dissatisfied with decisions of social workers or the family court about their suitability to visit, care for, or provide a home for a child. They alleged social worker(s) failed to make accurate assessments, were biased, failed to act in the child's interests, behaved unprofessionally or dishonestly, or breached confidentiality. In 18 cases it was alleged social workers victimised the family. Complainants also alleged misconduct, variously describing social workers as 'incompetent', 'dishonest', 'aggressive' and 'vile'.

Case 1

An expectant mother made a referral about three social workers involved in a decision to remove her baby at birth. Other children had been removed previously. On this occasion she argued that the father had been treated 'unfairly' and the social workers were biased against her and her family. HCPC followed up the referral four times, with no further response from family members and no further information on the allegation. The employer judged there were no fitness to practise concerns. HCPC closed the case after 16 months.

This is one example of many similar referrals followed up by HCPC, with 'no further evidence' forthcoming from referrers.

Inadequate care or knowledge

Several cases involved allegations of social workers not demonstrating adequate care, or not having necessary knowledge of a long-term condition to offer or obtain appropriate help. These referrals occurred in relation to child, adult and mental health services, most commonly concerning provision of educational or health services, or access to family members for people with disabilities.

Case 2

A service user contacted HCPC on multiple occasions, complaining about a social worker assigned to provide support. The social worker had allegedly told the service user that they had 'not taken responsibility for [their] actions', which had worsened the service user's mental health condition. HCPC sent seven letters to the service user requesting further information. Eventually the service user informed HCPC that they did not understand the letters and had 'no idea' what 'fitness to practise' meant. Following further explanation by the case manager, the person said that all they wanted was an explanation. They had raised concerns with the employer, but wanted reassurance that this behaviour would not be repeated with other service users with mental health conditions. The social worker subsequently apologised for this 'one-off' incident. (case length: six months)

Several referrals concerned disputes over specific care packages or poor care. For example, the father of a young man with a drug addiction alleged social services failed to provide adequate follow-up care after his assessment. Some referrals came from parents/carers of young people with physical or learning disabilities, who described feeling "abandoned" by professionals and unable to obtain the necessary support.

Case 3

The family of a child with disabilities alleged negligence and failure by five social workers to provide adequate assessment and care for their child. The

family alleged the social workers' behaviour during meetings was unacceptable, with breaches of confidentiality. The family struggled to obtain support, felt they were not heard, and had not received appropriate services. The employer had investigated the complaint, and none of the allegations against the individual social workers were upheld. HCPC follow-up confirmed this. The case was closed after 11 months.

Conduct

Disputes within teams or with managers

Several referrals related to disputes within social work teams and with line managers. Allegations were made against managers who had 'abused positions of power', pressurised junior staff to meet targets, demonstrated bullying behaviour, or failed to provide appropriate supervision, training or support. One concerned a social worker who had allegedly failed to complete a safeguarding assessment and was suspended by her employer, but re-instated after investigation and signed off on sick leave. This social worker subsequently put in a grievance against her employer and alleged her referral to HCPC was a cover-up for other team members. The HCPC investigation did not find sufficient documentation to evidence the employer's concern, but did establish that the social worker had inadequate supervision at the time and had not received safeguarding training.

Convictions/cautions

Referrals relating to convictions/cautions closed at the initial stage tended to be less serious, judged not to impact on a social worker's fitness to practise. Two self-referrals from social workers related to driving offences, and one to fare evasion.

Sexual conduct, dishonesty and breach of confidentiality

Eight allegations of a sexual nature were closed at the initial stage due to lack of evidence or lack of seriousness. A service user in a mental health setting alleged a social worker had a sexual relationship with her, but did not provide further evidence to HCPC. The employer did not verify whether evidence presented to them by the service user was linked to the social worker and did not respond to requests for further information.

Eight referrals closed at the initial stage related to dishonesty in personal or professional contexts. Some were allegations by employers, including failure to inform the employer of a driving ban and financial mismanagement of overtime payments. Several referrals from service users alleged social workers were dishonest or deliberately misleading. One was referred for assuring parents that their child would be returned and failing to follow this through. Another service user alleged six social workers had acted dishonestly in conducting unnecessary assessments into her mental well-being, determined to section her under the Mental Health Act 1983.

involved social workers accessing personal information about service users in cases in which they had a personal interest. For example, a social worker was referred by a neighbour for allegedly accessing confidential files about the neighbour's children, about whose care the social worker had concerns. The local investigation found no evidence of breach of confidentiality; HCPC closed the case within three months.

Interpersonal/communication issues, including disputes with students

Five referrals closed at the initial stage were a mix of interpersonal issues and communication breakdown between service users and social workers, often concerned with the manner decisions were conveyed, or lack of communication following a contentious outcome. Many referrals described social workers as 'unprofessional' in their communications, failing to communicate or follow up communications. These alleged failures occurred in volatile and distressing circumstances, in which service users expressed anger, resentment and disappointment with social workers.

Several referrals (4) were from students complaining about inappropriate behaviour of university staff and social workers responsible for them whilst on placement. One concerned alleged bullying and two alleged drug abuse by members of staff. These concerns had been previously investigated at a local level.

Findings related to cases closed at ICP stage

The 28 cases closed at the ICP stage were evenly split between relatively clear-cut allegations about competence and performance (14) and conduct and behaviour (14). Many tended to be one-off occurrences, and if the matter had been, or could

be, resolved locally or was thought not to affect the social worker's fitness to practise, the case was closed.

Competence and performance issues

These referrals were classified into three types: inaccurate assessment/reporting (10); inadequate care (2); and administrative failings (2).

Competence and performance issues predominantly concerned one-off incidents of inaccurate or incomplete assessment and recording (e.g. social workers not accurately recording a home visit and circumstances of the child, not conducting a full assessment of a child's wishes regarding a future placement). In a few one-off instances registrants allegedly did not provide adequate care, for example, not undertaking a same day visit to an alleged rape victim; not recognising urgency about a child's medical condition; or not reporting suspected drug overdoses.

Most of these social workers engaged fully with investigations, and they and their employers provided evidence of regret that the incident had occurred and steps taken to remediate (for example, peer supervision, studying, good record keeping). In a few cases social workers had experienced long-term illness at the time of the incident(s) or had made it clear to their managers that the incident was related to workload pressures.

Two cases related to administrative failings, both of which implicated an organisational failure and were not deemed by ICP as an individual responsibility, of which Case 4 is an example.

Case 4

An experienced social worker with concerns about timescales for processing domestic abuse notifications made a self-referral. Under direction of the team manager, this social worker delayed recording 'medium and standard risk' notifications until decisions were made regarding contacts already logged. This reduced the number of contacts deemed to be outside the target timescale for completion. The social worker was investigated, expressing regret and acknowledging 'potential harm' to children from this practice. It was ascribed to an 'error of judgement' and 'flawed system' during a period of

‘extreme’ workload pressure. The ICP concluded there was no case to answer, as the social worker was not individually responsible for organisational practice. (case length: 12 months)

Conduct issues

These fell into four categories: interpersonal/communication issues (9); breaches of confidentiality (3); registration issue (1); dishonesty (1)

Evidence of conflict with service users was apparent in some referrals categorised as interpersonal/communication issues. For example, a service user alleged a social worker had been rude and dismissive towards them in a case conference. The social worker’s response revealed that, with hindsight, they ‘would not act in the same way should a similar situation arise’ and had undertaken further training in relation to this incident. There were also examples of disputes between managers and social workers, resulting in referrals to HCPC. In one case, it was alleged the social worker had falsified assessment activities on the electronic record system. The social worker’s response included reference to lack of support by the manager, who allegedly encouraged this activity to prevent the service from breaching 28-day waiting targets for routine assessments.

Breaches of confidentiality cases included allegations by employers that social workers had left a work laptop open at the family home, and had shared a report containing sensitive information with service users. In the latter case, there was evidence of dysfunctional relationships between the social worker and their manager and within the team.

The dishonesty case involved allegations by an employer of a social worker falsifying assessment activity on electronic records - duplicating previous assessments as ‘new’. The social worker claimed the line manager encouraged this practice in order to meet targets.

The registration issue concerned a social worker who had continued under direction of the team manager to practise without registration. The individual admitted wrongdoing, made it clear there was no intention to avoid registration, and took steps immediately to rectify this.

Findings relating to cases closed at final hearings stage

Analysis of 31 cases brought before HCPC panels found two broad typologies: competence and performance (18) and conduct and behaviour (12). There was one health-related case. These were the more serious cases, which, if proved, were judged to have a likelihood of a significant impact on the social worker's fitness to practise, and hence on well-being of service users and members of the public. At final hearings, if the facts are proved, misconduct/lack of competence/ill-health is found and fitness to practise judged to be impaired, then various sanctions can be applied, ranging from a caution order to being struck off the register. As shown in Table 5, of the 31 final hearing cases analysed, sanctions were applied in 28 cases, with only three cases judged 'not well-founded'. Nine social workers were struck off.

Table 5: Breakdown of sanctions at final hearings

Sanction	Number of cases
Struck off	9
Suspended for 12 months *	9
Conditions of Practice for 6 months**	4
Caution Order ***	6
Not well-founded	3

* 4 later struck off

** 1 later struck off

*** Caution orders can remain on the register for different lengths of time

Competence and performance (18 cases)

Competence and performance cases included: serial failures in performance; one-off failures; and breaches of confidentiality.

Serial failures included failure to: keep adequate records, undertake appropriate assessments, manage deadlines, use IT systems, follow up risk assessments, and follow safeguarding and other protocols, some of which put service users at risk and demonstrated serial instances of inadequate care and administrative failings.

Case 5

An employer referred a social worker to HCPC. This complex case involved three child protection social workers. Serious concerns were raised regarding these social workers' practice over a two-year period about three specific child care cases, where a child was put at risk of harm because child protection procedures were not initiated in a timely manner; an allegation of sexual abuse against another child was not investigated; and care proceedings were not initiated for another child who had been referred with possible non-accidental injury. Due to the serious and repeated nature of these failings, and a lack of information as to insight and remediation, the panel decided it could not be sure about the likelihood of repetition and risk to the public (the social worker was not present but was available by phone). Following the panel making a 12 month suspension order, the social worker requested voluntary removal from the register. (case length: 2 years)

Breaches of confidentiality included accessing records and sharing information on family members without authorisation and coercing service users into sending positive feedback during an internal complaints investigation. Only one case related to a one-off incident; all others included multiple occurrences.

Conduct and behaviour (12 cases)

These cases included: convictions and cautions; financial dishonesty; dishonesty regarding conflicts of interest; and drug and alcohol-related issues.

Convictions and cautions related to behaviour outside the work environment, and included common assault, generating indecent images of children and racist behaviour towards the police.

Case 6

Following a disciplinary hearing the social worker was summarily dismissed from employment and referred by their employer to HCPC. HCPC issued an interim order. The social worker had been cautioned and required to sign on to the Sex Offenders Register for two years as a result of police discovering downloaded indecent images of young boys on their home computer. Given

the worker was involved in safeguarding children, the panel judged that such conduct was incompatible with the role. Although the social worker admitted downloading the images, the panel was concerned that neither remorse nor insight was apparent and no professional help had been sought. Given concern about past behaviour, and potential for future harm, the social worker was struck off the register. (case length: 11 months)

Cases concerning dishonesty were wide-ranging, including instances of financial fraud, from expense claims to mishandling funds in a foster care setting.

Several cases concerned boundaries, often linked to conflicts of interest. These included: inappropriate discussion of sexual matters in a childcare setting; failure to declare a personal commercial interest when referring a service user to another provider; applying to foster a child on the social worker's own caseload; and having a relationship with the parent of a child assessed during a previous investigation.

Case 7

An employer referred a social worker to HCPC for failure to maintain professional boundaries by forming an inappropriate relationship with the father of a child who had previously been assessed by the social worker. The social worker, now pregnant by the man, had started a relationship six months after the child's case was closed. Although there was no evidence that the relationship had started prior to the closure of the case, the panel found that the social worker had formed an inappropriate relationship with a service user. It was considered that there had been insufficient distance between closing the case and the relationship starting and, although highly regarded as a social worker, the panel felt the misconduct could impact on confidence in the social worker and the profession. There was also insufficient evidence for the panel to conclude that there was no risk of repetition, due to a lack of conclusive insight by the social worker. The panel therefore decided to suspend the social worker for 12 months. (case length: 2 years)

In the sample there were limited instances of drug and alcohol related cases. One case saw the social worker develop an ailment, which was alleviated by alcohol. The

social worker was dismissed by the employer for smelling of alcohol at work, but the case referred to HCPC was not judged to be well-founded by the panel.

Health (1 case)

The hearing for the one health-related case was held in private. The social worker was suspended for 12 months. Subsequent suspensions due to inability to work meant the social worker was still suspended from practice at the time of the research.

Discussion

The case analysis presents a complex picture of varied concerns raised about social workers by different stakeholders, for various reasons. Analysis of cases dealt with at the first two stages of the fitness to practice process offers unique insights not visible in previous studies that rely on published statistical data or summaries of the final hearings available on the web (e.g. Leigh et al., 2017). Of particular interest is the profile of cases that do not reach the standard of acceptance at the initial stage.

Inappropriate referrals, failure to provide further evidence and organisational issues

A large proportion of these referrals are made by service users, especially about child residence and contact. Family members may be angry at decisions, or feel they have been treated disrespectfully, or worse, by social workers. They may be unaware that HCPC is not a general complaints body, or that there are local authority or agency complaints procedures that should be tried first. In many of the cases, referrers do not respond to requests for further information to substantiate their claims, as exemplified in Cases 1 and 2. There are several reasons for this, some of which relate to the nature of the complaint, frustrations with the current system and a sense of lack of redress at a local level. These cases may also signal the need for regulatory bodies to communicate in language that is accessible and sensitive to cultural norms, and to find ways of supporting service users to substantiate referrals or make complaints to another more appropriate body.

Some referrals at the initial and Investigating Committee stages relate to one-off instances of poor conduct or competence that are not serious enough to put the social worker's fitness to practise in question, especially if evidence is forthcoming

that steps have been taken to acknowledge or put right ('remediate') the mistake or poor behaviour. Furthermore, many cases are judged by HCPC to relate to organisational as opposed to individual failings by social workers, and case files show the significant time HCPC deploys in filtering out referrals that relate more to organisational than individual issues. This is not picked up in previous research focussing solely on final hearings (e.g. Leigh et al. 2017).

Serious concerns and mitigating factors

The majority of cases reaching the final hearing stage, however, are more serious, with potential to lead to a judgement of 'impairment'. Often organisational issues are contributory factors, but individual behaviour is serious enough to warrant examination at a final hearing. Precisely what judgement is made and what sanctions imposed depends on many variables, not all of which are obvious in final hearing summaries on the web. A previous study (Leigh et al., 2017), with access only to these summaries, suggests there is no link between seriousness of the social worker's actions that led to a referral, and the actual finding of the panel and sanction(s) applied. However, our study found that panel decisions also take account of mitigating factors offered by social workers or witnesses, if present, and the extent to which social workers show evidence of genuine regret, remorse and willingness to engage in remediation. Although case files cannot tell us exactly what weight panels place on each of these factors, repeated patterns of misconduct/incompetence, degree of insight into failings and actual or potential harm to service users (seriousness) are all taken into account.

A continuum of concerns and the 'dark yellow card'

The case analysis led the research team to propose a continuum of fitness to practice concerns from potential to actual impairment, based on the yellow/red card analogy from football. Here players committing misconduct may either receive a yellow card (a caution) or for more serious misconduct, a red card meaning they are dismissed ("sent off") from the field. In some cases closed at the initial and investigating committee stages genuine matters of concern were raised, but these could be regarded as of the 'yellow card' variety, which could be dealt with locally. More serious cases could be classified as deserving of a dark yellow card, which

may tip them into the final hearings stage if they exhibited several instances of more serious misconduct or incompetence requiring sanctions (red card) (See Figure 1).

Figure 1: The continuum of impact on fitness to practise and the 'dark yellow card'

[Insert Figure 1 near here]

Arguably it is actions in the 'dark yellow card' category that require most attention and vigilance from managers and employers. It is important to ensure a 'one-off' incident is understood as often due to organisational factors such as inadequate supervision, pressurised working environments or a bullying culture that can move behaviour towards a 'point of concern' (Sparrow, 2008) when fitness to practise becomes impaired.

Conclusions

This research suggests potential for further action by employers and the regulator to reduce the volume of inappropriate referrals against social workers, as well as to improve working conditions and standards of practice in social work. Here we highlight some implications of the research.

Issues for employers

Of the cases not proceeding beyond the initial stage, we are unable to judge how many involved some element of 'poor practice' by social workers. Yet there is no doubt that if social workers were to spend more time explaining and engaging in respectful communication with service users, this might reduce resentment and anger. This is difficult in pressurised, target-driven work environments, and would require a change of culture and increased resources to make a real difference. Furthermore, if more employers had established, well-publicised and accessible complaints procedures locally, this might also enable at least some service users to feel properly heard, and less inclined to make a referral to HCPC out of frustration with local resolution processes. It is also important that employers respond to HCPC requests for information (indeed they are required to do so by law), even if they are not able to provide the evidence required.

Issues for the regulator

It is increasingly acknowledged that regulators can and should play more proactive roles in promoting good practice. Indeed, the need to be aware of, and guard against, the potentially harmful role of regulation is increasingly highlighted (Austin et al., 2018). Far from increasing public credibility and confidence in professions, there can be a tendency for the fact that many referrals are made, dealt with slowly and then dismissed, to reinforce the idea that the regulator is colluding with the profession. Furthermore, fears of social workers about possible referrals to the regulator may cause them to 'go by the book', become fearful of acknowledging mistakes and reduce communication with service users, hence exacerbating concerns of service users and likelihood of referral to the regulator ('regulatory iatrogenesis'). A report from the Professional Standards Authority (2015), which oversees the work of regulators, argues for 'right-touch' regulation, which is proportionate and takes a more proactive role in mediating between conflicting parties, and in educating employers, registrants and students. HCPC has already taken on board this more proactive stance and is acting on several recommendations made as a result of this research. These include making clearer on the website the types of concerns it is appropriate to raise, and redesigning the referral form to lead people away from the referral process if their concerns do not fit the criteria. This should contribute to refocusing on cases that deserve attention. There is also a more general challenge for regulators to ensure that their communication with service users is written in language that is understood, and to ensure service users are adequately supported to understand the process and the nature of the evidence required to support a referral, particularly if they are from culturally and linguistically diverse backgrounds.

At the time of writing, the social work regulator for England is about to change yet again. Part of the rationale is for the new body, Social Work England, to play a greater role than HCPC could in raising standards in social work through developing specialist expertise and learning from the regulatory process and overseeing educational standards. Whilst changing the regulator is not a panacea for improving social work practice (which is influenced by deeper structural problems of austerity, victim-blaming, managerialism and resource shortages, see Weinberg and Banks, 2019), there are clear lessons from this research for the new regulator and regulators in general.

References

- Austin, Z., van der Gaag, A., Gallagher, A., Jago, R., Banks, S., Lucas, G. & Zasada, M. (2018) 'Understanding complaints about paramedics in the UK and social workers in England: findings from a multi-method study', *Journal of Medical Regulation*, **104** (3), pp. 19-28.
- Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology ', *Qualitative Research in Psychology*, **3**, pp. 77-101.
- Cromarty, H. (2016) *Social Work Regulation (England)*, Briefing Paper CBP07802, London, House of Commons Library.
- Department of Health (2010) *Liberating the NHS: Report of the arm's length bodies review*, London, Department of Health,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216278/dh_118053.pdf, accessed 23.12.18.
- Dunning, J. (2010) 'Sector leaders shocked and surprised by abolition of GSSC', *Community Care*, **26 July**, www.communitycare.co.uk/2010/07/26/sector-leaders-shocked-and-surprised-by-abolition-of-gscc/, accessed 23.12.18.
- Department of Health (DH) (2010) *Liberating the NHS: Report of the arm's-length bodies review*,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216278/dh_118053.pdf, accessed 1.3.19
- Furness, S. (2015) 'Conduct Matters: The Regulation of Social Work in England ', *British Journal of Social Work*, **45**, pp. 861-879.
- Gallagher, A., Zasada, M., Jago, R., Austin, Z., Banks, S., Lucas, G. & van der Gaag, A. (2018) 'Fitness-to-practise concerns and preventative strategies' *Journal of Paramedic Practice*, **10**(4), pp. 163-169.
- General Medical Council (GMC) (2016) *UK health regulator comparative data report 2016*, prepared by GMC for Chief Executive Steering Group, London, GMC,
www.gmc-

[uk.org/static/documents/content/UK_health_regulator_comparative_report_FIN_AL_220217.pdf](http://www.hcpc-uk.org/static/documents/content/UK_health_regulator_comparative_report_FIN_AL_220217.pdf), accessed 2.2.19

Health and Care Professions Council (HCPC) (2012) *Standards of conduct, performance and ethics*, London, HCPC, www.hcpc-uk.org, accessed 23.12.18.

HCPC (2015) *Fitness to practise annual report 2015*, London, HCPC, www.hcpc-uk.org/resources/reports/2015/fitness-to-practise-annual-report-2015/, accessed 23.12.18.

HCPC (2017) *Standards of proficiency - Social workers in England* London, HCPC, www.hcpc-uk.org/resources/standards/standards-of-proficiency-social-workers-in-england/, accessed 23.12.18.

HCPC (2018) *Fitness to practise annual report 2018*, London, HCPC, www.hcpc-uk.org/resources/reports/2018/fitness-to-practise-annual-report-2018/, accessed 23.12.18.

HCPC (n.d.) *Factsheet: Standard of acceptance explained*, London, HCPC, www.hcpc-uk.org/resources/policy/the-standard-of-acceptance-for-allegations/, accessed 23.12.18.

Kelly, T. (2013) 'Parents' social service hell after one anonymous letter: Judge attacks Baby P council for 'knee-jerk' abuse investigation', *The Daily Mail*, 14 March 2013, www.dailymail.co.uk/news/article-2293432/Parents-social-service-hell-anonymous-letter--Judge-attacks-Baby-P-council-knee-jerk-abuse-investigation.html, accessed 23.12.18.

Kirwan, G. and Melaugh, B. (2015) 'Taking Care: Criticality and Reflexivity in the Context of Social Work Registration', *British Journal of Social Work*, **45**, pp. 1050-1059.

Leigh, J., Worsley, A. and McLaughlin, K. (2017) 'An analysis of HCPC fitness to practice hearings: Fit to Practise or fit for purpose?', *Ethics and Social Welfare*, **11**(4), pp. 382-396.

- Lucas, G., Zasada, M., Gallagher, A., Jago, R., Banks, S., Zubin, A., & van der Gaag, A. (2019) 'Understanding complaints about paramedics: a qualitative exploration in a UK context' *Australasian Journal of Paramedicine*, **16**, pp.1-7
- McLaughlin, K., Leigh, J. and Worsley, A. (2016) 'The State of Regulation in England: From the General Social Care Council to the HCPC', *British Journal of Social Work*, **46**, pp. 825-838.
- Parker, R. (1990) *Safeguarding standards: a report on the desirability and feasibility of establishing a United Kingdom independent body to regulate and promote good practice in social work and social care*, London, National Institute of Social Work.
- Professional Standards Authority (2015) *Rethinking Regulation*, London, PSA, www.professionalstandards.org.uk/publications/detail/rethinking-regulation accessed 23.12.18.
- Sparrow, M. (2008) *The Character of Harms: Operational Challenges in Control*, Cambridge, Cambridge University Press.
- The Telegraph (2009) 'Lord Laming's review of Baby P failures ', *The Telegraph*, 6th May 2009, www.telegraph.co.uk/news/uknews/baby-p/5283897/Lord-Lamings-review-of-Baby-P-failures.html, accessed 23.12.18.
- van der Gaag, A., Lucas, G., Zasada, M., Gallagher, A., Jago, R., Banks, S., & Zubin, A. (2017) *People like us? Understanding complaints about paramedics and social workers*, Guildford: University of Surrey, <https://www.hcpc-uk.org/resources/reports/2017/people-like-us-understanding-complaints-about-paramedics-and-social-workers/>
- van der Gaag, A., Jago, R., Austin, Z., Zasada, M., Banks, S., Lucas, G. & Gallagher, A. (2018) 'Why do paramedics have a high rate of self-referral?' *Journal of Paramedic Practice*, **10** (5), pp. 205-210.
- Weinberg, M. and Banks, S. (2019) 'Practising Ethically in Unethical Times: Everyday Resistance in Social Work', *Ethics and Social Welfare*, **13** (4), pp. 361-75.

Worsley, A., McLaughlin, K. and Leigh, J. (2017) 'A Subject of Concern: The Experiences of Social Workers Referred to the HCPC', *British Journal of Social Work*, **47**, pp. 2421-2437.