

EDITORIAL

Who will guard the guardians of Social Work England?

Following the decision of the Employment Tribunal's remedy hearing decision in the case of *Rachel Meade v Westminster City Council (1) and Social Work England (2)*, Social Work England (SWE) has the unenviable distinction of being the only professional regulator in the UK ever to be ordered to pay exemplary damages to an individual it is required to regulate. After only six years in existence, this is a shocking failure.

For those wishing to remind themselves of the background of the case, readers are referred to the detailed account of the proceedings prior to the remedy hearing contained in the *Editor's Blog* on the Nagalro website and the news report in *Seen and Heard* (34–2).

Subsequently, on 26 March 2024, the Tribunal sent out its written decision on the damages award to be paid to Ms Meade and the details of the decision were published at the end of April. A total amount of £52,880.55 was ordered to be paid by Westminster City Council and Social Work England jointly, with an additional amount of £5,463.56 to be paid by Social Work England for exemplary damages. Such damages are reserved for the most serious abuses of power and (as the Tribunal states) 'are designed to punish conduct that is oppressive, arbitrary or unconstitutional'. In paragraph 86 of its decision, the Tribunal says:

'86. We consider that the Second Respondent's actions constituted a serious abuse of its power as a regulatory body. We accept Ms Cunningham's argument that the Second Respondent has allowed its processes to be subverted to punish and suppress the Claimant's lawful political speech, and to do so on grounds of her protected beliefs. In doing so it has violated her Convention rights to freedom of belief and expression and combined that violation with unlawful discrimination.'

At the heart of the injustice committed against Ms Meade is the agreed disposal powers, uniquely given to SWE by the Children and Social Work Act 2017. The power of a regulator to 'persuade' a professional to agree to a sanction without any external checking or approval is one that Nagalro opposed from the very outset. No other professional in the UK can be bullied into a sanction by their regulator without the approval of an independent body (such as the Solicitors Disciplinary Tribunal), sitting in public, to ensure that the offence has, in fact, been committed and that the proposed sanction is appropriate and proportionate.

In 2018, Nagalro pointed out that the lack of equality of arms between the regulator and the individual social worker could lead to frightened social workers, unable to afford unlimited legal costs, to agree to almost anything, simply to 'get it over with'. Just as Nagalro warned, in paragraph 63 of the remedy judgment, the Tribunal found:

As the Claimant's Regulator, telling her that her conduct was discriminatory. The Claimant initially felt compelled to accept that she was at fault given that she was stressed, felt under duress and understandably took the view that if the Regulator said her posts were discriminatory that was likely to be a reasonable position to adopt and therefore she must have been at fault.'

The age-old question, that troubled Plato in ancient Athens, was encapsulated by the Roman satirist Juvenal almost two thousand years ago when he asked, '*Quis custodiet ipsos custodes?*' Who will guard the guardians? More pertinently today, who will regulate the regulator? If Social Work England had been required to place its proposed resolution of Ms Meade's case before the *independent* adjudication panel, the case should have come to a swift end when the panel would have pointed out that the recent Employment Appeal Tribunal in *Forstater* made SWE's stance untenable. In that case, Westminster Council would not have instituted disciplinary proceedings against Ms Meade and much distress to Ms Meade and cost to all concerned would have been avoided.

Responding to concerns by BASW, the Social Workers Union and UNISON, Social Work England says that its accepted disposal powers are 'currently unique to us'. That should not be a boast. There are good reasons why no other profession has accepted such an approach and Ms Meade's case makes it very clear why. As Lord Justice Toulson explained in *R (Guardian News and Media Limited) v City of Westminster Magistrates Court* [2012] EWCA Civ 420, 'where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse.' It is no answer for SWE to say that its statutory duty is to protect the public. The support and consent of the social work profession at large is also necessary in a free society. We should have no truck with secret justice forced upon individuals, who are often unrepresented, frightened about how they will pay their mortgage and facing a body with seemingly unlimited resources.

The damning finding of the Employment Tribunal in Ms Meade's case, compounded by SWE's continuing failure to offer any apology for its appalling behaviour, points to a need for reform within the regulator. The government, however, cannot hide behind its creature. The accepted disposal powers are unfair, unjust and dangerous. They require immediate statutory reform.

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