

Social Worker: Debajit Sen

Registration Number: SW35613

Fitness to practise: Final hearing

Date(s) of hearing: 14 December 2020 – 18 December 2020

Hearing Venue: Remote hearing

Hearing Outcome: Removal order

Interim Suspension Order – 18 months

Introduction and attendees

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018.
2. Mr Debajit Sen did not attend and was not represented.
3. Social Work England was represented by Ms Charlotte Watts, instructed by Capsticks LLP, on days 1 to 3, and Ms Kathryn Pitters, instructed by Capsticks LLP, on days 4 and 5.

Adjudicators	Role
Wendy Yeadon	Chair
Rosemary Chapman	Social Worker Adjudicator
Jacqueline Nicholson	Lay Adjudicator

Jyoti Chand	Hearings Officer
Laura Merrill	Hearing Support Officer
Sadia Zouq	Legal adviser

Notice of Service:

4. Mr Sen (hereafter referred to as “social worker”) did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Ms Watts that notice of this hearing was sent to Mr Sen by recorded delivery and first-class post to his address on the Social Work Register (the Register). Ms Watts submitted that the notice of this hearing had been duly served.
5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. The panel considered the service bundle and the contents of the notice of hearing dated 9 November 2020, sent via email and recorded delivery. The panel had regard to the extract from the Register, the Statement of Service of Ivy Aduesi Mensah of Capsticks LLP, and the Royal Mail track and trace print out. The panel noted that the social worker’s last correspondence with Social Work England was an email dated 9

July 2020 in which he requested voluntary removal from the register.

7. Having had regard to the legal advice and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on the social worker in accordance with Rules 14(a), 44 and 45 of Social Work England's Fitness to Practice Rules 2019 ("the Rules").

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Ms Watts on behalf of Social Work England. She submitted that notice of this hearing had been duly served, no application for an adjournment had been made by the social worker and as such there was no guarantee that adjourning today's proceedings would secure his attendance. She reminded the panel that care and caution must be taken when exercising its discretion to proceed in a social worker's absence and referred to factors from case law relevant to proceeding in absence in the social worker's case. Ms Watts invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
9. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 and the cases of *R v Jones* [2002] UKHL 5 and the *General Medical Council v Adeogba* [2016] EWCA Civ 162. She referred the panel to the factors noted in the "Guidance on service of notices and proceeding in the absence of the social worker" (5 December 2019) from Social Work England's website.
10. The panel considered all of the information before it, together with the submissions made by Ms Watts on behalf of Social Work England. The panel had already concluded that service had been properly effected, and that the notice of hearing informed the social worker that the panel may proceed in his absence.
11. The panel noted that the social worker was informed that he should provide a response by 4 pm on 1 December 2020 as to whether he was attending remotely or providing written representations. No request for an adjournment had been made and no response had been received to the notice of hearing. The social worker had been made aware that the hearing would take place by remote video-link due to the Covid-19 pandemic. The social worker had not taken the opportunity to engage.
12. The panel determined that the social worker had voluntarily absented himself and that he had waived his right to participate in person. The panel also determined that an adjournment would be unlikely to secure his attendance at a future date. An adjournment was also not desirable due to the age of the Allegation and history of these proceedings. The panel had regard to there being two witnesses in attendance. It further noted that, while the social worker had corresponded with the Regulator on 9 July 2020 requesting voluntary removal, he had not engaged since.
13. Having weighed the interests of the social worker in regard to his attendance at the hearing with those of Social Work England and the public interest in an expeditious

disposal of this hearing, the panel exercised its discretion to proceed in the social worker's absence.

Preliminary matters

Applications to Amend the Allegation

14. Ms Watts, on behalf of Social Work England, made an application to amend the Allegation. The social worker had been notified of the application on 24 July 2020 and on 9 November 2020. No response had been received by the social worker. In summary Ms Watts applied to discontinue particular 4 and typographically amend particulars 5 and 6 to reflect the discontinued particular 4. She informed the panel that, having reviewed the evidence in the case, there was not a reasonable prospect of particular 4 being found proved.
15. Ms Watts submitted that the proposed deletion and amendments did not cause injustice or prejudice to the social worker. She stated that the proposed deletion favoured the social worker and that the corresponding amendments were typographical. Ms Watts reminded the panel that it has a duty to ensure cases are not under prosecuted.
16. The panel received and accepted the advice of the legal adviser. It carefully considered Ms Watts' applications to amend the particulars, including whether the social worker had had sufficient notice of the applications and whether the application caused any prejudice.
17. The panel was satisfied that the social worker had received sufficient notice of the application to amend the Allegation. The panel noted that the social worker had not responded to the application. Deletion was accepted because the panel agreed that there was insufficient evidence in the bundle to support the particular which was based purely on secondary hearsay evidence. The panel was satisfied that the deletion and amendments were necessary and provided clarity, and did not cause the social worker any prejudice.

Allegation (as amended)

Whilst registered as a social worker, and during the course of your employment at Birmingham City Council ("the Council"), you:

1. *Between approximately February 2013 and October 2016, used your position as a Social Worker and / or Senior Practitioner (Delivery) at the Council for financial gain in that you:*

(a) Arranged and / or approved for the following service users, that you were professionally involved with, to live and / or remain living in properties owned by you and / or Person A:

(i) Service User A;

(ii) Service User B;

(iii) Service User R;

(iv) Service User T;

(b) Assisted with, submitted and / or made funding applications to enable one or more of the following service users to be placed in accommodation at properties owned by you and / or Person A:

(i) Service User Q;

(ii) Service User G;

(iii) Service User F;

(iv) Service User C;

(v) Service User D;

(vi) Service User E.

2. Between approximately February 2013 and October 2016, did not declare any conflicts of interest to your employer in relation to the placement of the service users into properties owned by you and / or Person A.

3. Breached confidentiality in that you:

(a) On the following dates, sent emails to Person A containing information about service users:

(i) 28 April 2014;

(ii) 7 May 2014;

(iii) 9 May 2014;

(iv) 26 May 2016.

(b) Sent emails from your work email address to your personal email address which contained information about service users.

4. Your actions at paragraphs 1 and/or 2 were dishonest.

5. *The matters set out at paragraphs 1 – 4 amount to misconduct.*

6. *By reason of your misconduct, your fitness to practise is impaired.*

Background

18. The social worker was employed as a Senior Practitioner Delivery (SPD) by Birmingham City Council ('the Council') within the mental health services, until his dismissal on 05 December 2016. He had been employed by the Council since August 1997, initially as a Social Worker, then a Senior Social Worker then a SPD. He became a Mental Health Act Approved Social Worker/ Approved Mental Health Practitioner (AMHP) in 2000.
19. The social worker's alleged conduct first came to the attention of the Council in October 2016, when it received two complaints. The first complaint was from the mother (hereafter referred to as "Person J") of Service User A who claimed that the social worker, who was Service User A's Social Worker, owned the supported living placement in which he had placed Service User A. She asserted that the social worker had asked her not to reveal that he was Service User A's social worker. The second complaint came from Person K, a Lead Nurse for Safeguarding, who raised concerns of potential financial irregularities and the social worker's conflict of interest in respect of one of the properties owned by the social worker and/or his wife (referred to as "Person A" in the Allegation).
20. The Council carried out an investigation led by the Team Manager of the City Wide Approved Mental Health Professional (AMHP) and an audit was then carried out by the Principal Auditor at the Council's Corporate Fraud Team. Subsequently a referral of the social worker was made to the Health and Care Professionals Council ("the HCPC").
21. The referral was made on the basis of concerns that the social worker facilitated, using his position in the Council, the moving of service users under his care to accommodation which was owned by him and/or Person A. He also facilitated funding for service users to live in the accommodation from which it was said that he had benefitted financially. The social worker failed to declare that there was a conflict of interest in that he was acting as a social worker for service users who had tenancies in the properties owned by himself and/or Person A. It is alleged that this course of conduct was dishonest. It is further alleged that the social worker breached confidentiality by sending emails concerning service users and containing confidential information to his personal account and to Person A's email address.

Summary of Evidence

22. The panel was provided with a bundle from Social Work England which contained the following documentation:

- Social Work England’s statement of case, including proposed amendments to the Allegation;
- The witness statements bundle;
- The exhibits bundle.

23. The social worker did not submit any documentation.

24. Ms Watts’ opened the case on behalf of Social Work England. She referred the panel to her statement of case and called two live witnesses.

Finding and reasons on facts

Panel’s Approach

25. The panel reminded itself that the burden of proving the facts was on Social Work England. The social worker did not have to prove anything, and the individual particulars of the Allegation could only be found proved, if the panel was satisfied on the balance of probabilities (‘more likely than not’).

26. In reaching its decision on facts, the panel took into account the oral, written and documentary evidence. The panel also took into account the oral submissions from Ms Watts. The panel accepted the advice of the Legal adviser.

Assessment of witnesses

27. Witness 1: Witness one was employed at the Council as the Team Manager of the City Wide Approved Mental Health Professional (AMHP). Witness 1 retired from the Council and the Social Work profession in February 2020. Witness 1 knew the social worker in a professional capacity since 2004. Witness 1 was the social worker’s Line Manager at different times throughout his employment with the Council. Witness 1 was asked to investigate the allegations against the social worker. Witness 1 exhibited the investigation report dated 17 November 2016 and relevant appendices.

28. The panel noted Witness 1’s role as that of the Investigating Officer. The panel found Witness 1 to be a clear, credible and reliable witness who did their best to assist the panel. Although the witness’s role was purely a fact finding one, they were able to comment on the social worker’s competency, having line managed him at different times during his employment with the Council.

29. Witness 2: Witness 2 was employed as the Principal Auditor at the Council in the Corporate Fraud Team. Witness 2 was asked to conduct a number of audits and checks on the social worker which included Council Tax, Land Registry and Housing Benefit checks.

30. The panel found Witness 2 to be a fair, balanced and credible witness. Witness 2 conceded when they could not recall matters in response to some of the panel's questions.

Stem of Particular 1

31. The stem of the particular alleged that the social worker:

1. Between approximately February 2013 and October 2016, used your position as a Social Worker and / or Senior Practitioner (Delivery) at the Council for financial gain in that you

32. Witness 2 searched the Land Register. The search revealed that the social worker and/or Person A owned six properties. A search of Social Care Records and Housing Benefit payments further revealed that a number of Service Users were resident at the properties owned by the social worker and/or Person A. During the course of Witness 1's investigation, Person L and Person M, two managers of Sustain UK (an umbrella company for landlords of supported living facilities) were interviewed. Person L and M explained that Sustain UK collected the Housing Benefit payments of residents at the supported living facility, deducted a management fee from that amount and then paid the remaining sum to the landlord of the property. The social worker and/or Person A therefore received remuneration, as landlords, for the placement of service users in these properties.

33. Witness 1 stated that the Council had no formal knowledge that the social worker and/or Person A owned any properties used for supported living prior to the concerns being raised. This presented a conflict of interest which the social worker ought to have declared in accordance with the Council's General Code of Conduct and Employee Code of Conduct.

34. In relation to the stem of particular 1, the panel applied an objective test, namely that the social worker's actions in having arranged and/or approved accommodation (1(a)); assisted with, submitted and/or made funding applications (1(b)), amounted to financial gain as he owned or jointly owned the properties in which service users were placed in and for which funding applications were made to enable services users to live in the properties. The social worker did not declare his conflict of interest in accordance with the Council's requirements. The social worker and/or Person A received a proportion of the service users Housing Benefits through the arrangement with Sustain UK. He therefore financially gained from his conduct in particulars 1(a) (i), (ii), (iii) and (iv) and 1(b) (iv), (v) and (vi).

35. The panel's decision on particulars 1(a) and 1(b) and the sub-particulars for each is set out below.

Particulars 1(a) (i), (ii), (iii) and (iv) – Found proved

(a) Arranged and / or approved for the following service users, that you were professionally involved with, to live and / or remain living in properties owned by you and / or Person A:

(i) Service User A;

(ii) Service User B;

(iii) Service User R;

(iv) Service User T;

Particular 1(a)(i) - proved

36. In relation to particular 1(a)(i), the panel considered Witness 1's evidence and the contents of the document "Summary of Telephone Contact with Person J (Service User A's mother)" dated 4 October 2016. Witness 1 stated that while the social worker was the allocated Social Worker for Service User A, he arranged his placement at one of the six properties on 4 August 2016. The panel noted that in the telephone contact summary document, Person J was reported to have informed the Council that the social worker told her not to tell anyone that he was a social worker because it would be seen as a conflict of interest. Person J was informed by the social worker that during a visit by the Home Treatment Team at the property, he told them that he was a caretaker, and not a Social Worker.

37. The panel determined that the social worker had arranged for Service User A to live in a property owned by him and/or Person A. The panel found particular 1(a)(i) proved on the balance of probabilities.

Particular 1(a)(ii) - proved

38. In relation to particular 1(a)(ii), the panel noted that Witness 1 stated that the social worker was Service User B's Approved Mental Health Professional ("AMHP") in 2016. In August 2016 Service User B was living at one of the properties owned by the social worker and/or Person A and was subsequently moved to another property, also owned by the social worker and Person A.

39. The panel determined that the social worker had arranged for Service User A to live in properties owned by him and/or Person A. The panel found particular 1(a)(ii) proved on the balance of probabilities.

Particular 1(a)(iii) – proved

40. In relation to particular 1(a)(iii), the panel noted that Witness 1 stated that Service User R had an allocated Social Worker who was supervised by the social worker. There was no evidence that the social worker directly arranged Service User R's accommodation. Service User R was moved into one of the properties owned by the social worker and Person A in April 2013. Witness 1 stated that the social worker was responsible for the allocation and oversight of Service User R's allocated cases. The

social worker would therefore have been responsible for approving Service User R's accommodation.

41. The panel therefore determined that the social worker had approved that Service User R was to live in a property owned by him and/or Person A. The panel found particular 1(a)(iii) proved on the balance of probabilities.

Particular 1(a)(iv) - proved

42. In relation to particular 1(a)(iv), the panel noted that Witness 1 stated that Service User T had an allocated Social Worker who was supervised by the social worker. There was no evidence that the social worker arranged Service User T's accommodation. Service User T was moved into one of the properties owned by the social worker and/or Person A on 23 May 2016. Witness 1 stated that the social worker was responsible for the allocation of service user's and oversight of Service User T's allocated cases. The social worker would therefore have been responsible for approving Service User T's accommodation.

43. The panel therefore determined that the social worker had approved that Service User T was to live in a property owned by him and/or Person A. The panel found particular 1(a)(iv) proved on the balance of probabilities.

Particulars 1(b) (iv) (v) and (vi) – Found proved

Particular (1)(b)(i), (ii) and (iii) – Not proved

1(b) Assisted with, submitted and / or made funding applications to enable one or more of the following service users to be placed in accommodation at properties owned by you and / or Person A:

- (i) Service User Q;***
- (ii) Service User G;***
- (iii) Service User F;***
- (iv) Service User C;***
- (v) Service User D;***
- (vi) Service User E.***

Particular 1(b)(i) – not proved

44. In relation to particular 1(b)(i), the panel had regard to Witness 1's evidence. Witness 1 stated that the social worker was Service User Q's allocated Social Worker for two months between January 2016 and March 2016 during which time the service user was moved to one of the properties owned by the social worker and/or Person A. Witness 1 stated that the housing benefit in relation to Service User Q at the property commenced week ending 31 January 2016 and that the social worker made an

application for additional funding to the Joint Funding Committee on 12 February 2016.

45. The panel had regard to an exhibit in the bundle dated 12 February 2016. The exhibited document referred to Service User Q and was from the Senior Strategic Commissioning Manager (SSCM) of the Joint Commissioning Team – Mental Health, addressed to the social worker. The SSCM stated that following the social worker’s presentation of the case to the Mental Health Joint Funding Panel, the panel had “agreed to the request for an additional two hours per day of home support”. The panel considered that the two hours of home support was not support that enabled the service user to be placed in the accommodation. Accordingly, the panel did not find particular 1(b)(i) proved.

Particular 1(b)(ii) – not proved

46. In relation to particular 1(b)(ii), the panel had regard to the evidence of Witness 1. Witness 1 stated that the social worker was Service User G’s allocated Social Worker from 22 April 2014 until 5 November 2014. The service user’s allocated Social Worker then changed to Staff Member H. On 18 May 2015, Service User G was moved to one of the properties owned by the social worker and/or Person A. In May 2015, the social worker presented a funding application to the Mental Health Joint Funding Panel in relation to Service User G.
47. The panel had regard to a document exhibited by Witness 1, dated 6 May 2015, and completed by the SSCM of the Joint Commissioning Team – Mental Health. In this document the SSCM confirmed that the social worker had informed the Mental Health Joint Funding Panel that Service User G could not return to his previous accommodation due to a deterioration in health, and that alternative supported accommodation was required. The SSCM stated “You are sourcing alternative supported accommodation, and the panel agreed to fund up to 5 hours/day of support initially”, and that this support will be “funded 50 -50 by the local authority and the NHS under s.117 MHA”. The SSCM concluded “please inform me when you have identified the accommodation...”.
48. It was not clear to the panel from this document what was the nature of the “support” being offered. Further, it could not be established in the evidence whether the social worker had identified accommodation and if so, was the accommodation a property owned by him and/or Person A. To prevent speculation, the panel concluded that, on the balance of probabilities, there was insufficient evidence that the social worker had assisted with, submitted or made a funding application to place the service user at a property owned by him and/or Person A. Accordingly, the panel did not find particular 1(b)(ii) proved.

Particular 1(b)(iii) – not proved

49. In relation to particular 1(b)(iii), the panel had regard to the evidence of Witness 1. Witness 1 stated that the social worker was Service User F’s allocated Social Worker

from 27 November 2014 until 16 July 2015. On 12 January 2015 the social worker placed the service user in one of the properties owned by the social worker and/or Person A. On 25 January 2016 the social worker presented a funding application to the Mental Health Joint Funding Panel in relation to Service User F.

50. The panel had regard to correspondence dated 25 January 2016 exhibited by Witness 1. The correspondence, between the social worker and the SSCM of the Joint Commissioning Team – Mental Health, informed the social worker that, following his presentation to the Mental Health Joint Funding Panel on 14 January 2016, the Funding Panel had agreed to re-instate the previous funded package of 21 hours per week home support from the Council.
51. The panel noted that the funding application was for a care package and not a funding application that enabled the service user to be placed in accommodation. The panel further noted that the service user had been resident at the property since 12 January 2015 - a year prior to the funding application for the care package, and that there was no evidence to suggest that the service user had moved from the property.
52. The panel concluded that the social worker had not assisted with, submitted and/or made a funding application to enable Service User F to be placed in a property owned by him and/or Person A. The panel therefore found particular 1(b)(iii) not proved.

Particular 1(b)(iv) – proved

53. In relation to particular 1(b)(iv), Witness 1 stated that Service User C's allocated Social Worker was Staff Member H from 14 September 2012 until 12 January 2016. Staff Member H was allocated cases and supervised by the social worker. In February 2013 the social worker presented a funding application to the Mental Health Joint Funding Panel in relation to this service user to be placed at one of the properties owned by the social worker and/or Person A. The service user was moved to the property on 15 April 2013.
54. The panel had regard to correspondence dated 15 February 2013 exhibited by Witness 1. The correspondence and Witness 1's evidence was that the social worker attended a group meeting on this date with his student Social Worker, who he supervised, and another Social Worker (SW1) who were unaware of his interest in the property. The meeting concerned the property owned by the social worker and/or person A. The correspondence stated: *"It is of everyone's opinion a combined IB for....and two other service users will provide the support necessary to fund this accommodation as a step down placement from rehabilitation accommodation toward living independently in the community and social worker to present all three IB's to the joint commission panel Tuesday 27th February at 10:00 am"*.
55. Witness 1 confirmed that it was agreed that the social worker would look at combining Service User's C, D and E's Individual Budget Application (IB) payments to pay for the

accommodation. It was further agreed that the social worker, and the student Social Worker supervised by him, would present all three applications to the joint commissioning panel. Witness 1 confirmed that the application was for funding for Service User C to be placed in a property he and/or Person A owned while the staff member he supervised was the service user's allocated Social Worker. Witness 1 stated that it was not known by the Council that the social worker and/or Person A owned the property.

56. The documentary evidence stated that the social worker presented the application, and assisted Staff Member H, therefore it can be accepted that he submitted and made the funding application. The panel therefore found particular 1(b)(iv) proved.

Particular 1(b)(v) – proved

57. In relation to particular 1(b)(v), the panel had regard to the evidence of Witness 1. Witness 1 stated that the social worker was the allocated Social Worker for Service User D from 28 February 2014 to 27 January 2016. The panel had regard to the correspondence exhibited by Witness 1 detailed in paragraph 54 above. Witness 1 stated that at the group meeting of 15 February 2013, others present were unaware of the social worker's interest in the property, believing it to be owned by Sustain UK. It was agreed at the meeting that the social worker and Staff Member H, who was supervised by the social worker, would present the Individual Budget Application for Service User D to the joint commissioning panel. On 15 April 2013 Service User D was moved from their residential property to a property owned by the social worker and/or Person A.

58. The documentary evidence stated that the social worker presented the application, and assisted Staff Member H, therefore it can be accepted that he submitted and made the funding application. The panel therefore found particular 1(b)(iv) proved.

Particular 1(b)(vi) – proved

59. In relation to particular 1(b)(vi), the panel had regard to the evidence of Witness 1. Witness 1 could not confirm whether the social worker was the allocated Social Worker for Service User E. Witness 1 believed that it was likely that SW1 was the allocated Social Worker and that SW1 would have agreed for the student Social Worker, supervised by the social worker, to complete the Individual Budget Application's for experience.
60. The panel had regard to the correspondence exhibited by Witness 1 detailed in paragraph 54 above. Witness 1 stated that at the group meeting of 15 February 2013, others present were unaware of the social worker's interest in the property. It was agreed at the meeting that the social worker and Staff Member H, who was supervised by the social worker, would present the Individual Budget Application for Service User

E to the joint commissioning panel. On 15 April 2013 Service User E was moved from their residential property to a property owned by the social worker and/or Person A.

61. The documentary evidence stated that the social worker presented the application, and assisted Staff Member H, therefore it can be accepted that he submitted and made the funding application. The panel therefore found particular 1(b)(vi) proved.

Particular 2 – proved

2. Between approximately February 2013 and October 2016, did not declare any conflicts of interest to your employer in relation to the placement of the service users into properties owned by you and / or Person A.

62. In relation to this particular, the panel had regard to the evidence of Witness 1 and corresponding exhibits which included the Employee Code of Conduct for the Council and a blank Potential Conflict of Interest Form. Witness 1 stated that every Council employee was responsible for declaring potential conflicts of interest in accordance with the Employee Code of Conduct. The social worker would have been made aware of the Code of Conduct, as well as the Council's Policies and Procedures and the need to familiarise himself with them, when he commenced his employment with the Council. In response to panel questions Witness 1 stated that the Council had a checklist for new employees which they were required to work through before being signed off and that all documents were available on the Council's Intranet if in doubt.
63. Witness 1 further stated that the social worker was required to complete a Potential Conflict of Interest Form. He was required to declare any personal interests which may have conflicted with the Council's policies and guidance. If the social worker was unsure about declaring a conflict of interest, then he should have spoken to the Human Resources Department or his Line Manager.
64. Witness 1 was unable to locate evidence of the social worker having completed a declaration of potential conflict of interest form in relation to any of the six properties owned by him and/or Person A. Witness 1 asked the line managers of the social worker for any declaration of conflicts of interest but "did not locate any evidence" of the social worker "having completed a declaration of potential conflict of interest form in relation to any of the six properties".
65. The panel considered Witness 1's evidence and corresponding exhibits. It noted that the Code of Conduct document for the Council stated:
- Employees must not put themselves in a position where duty and private interests' conflict and they must not make use of their employment to further their private interests;
 - Employees must not in their official capacity: allow their personal interests to conflict with the Council's requirements; use their position improperly to confer an advantage or disadvantage on any person;
 - Employees are required to complete the Potential Conflict of Interest form.

66. Some of the personal interests that ought to be declared by employees are detailed in the Code as a non-exhaustive list. For example, it is expected for an employee to declare that they are involved in applications to the Council for services such as housing, including temporary housing; and for a personal interest to be declared when an employee's role in the Council could unduly influence decisions or contracts the Council either has or is proposing to enter in which the employee holds a financial or personal interest either directly or indirectly, for example, through a partner or relative.

67. The panel considered that the Code of Conduct was explicit in its requirements regarding declaration of personal conflicts of interests, and the examples provided were directly relevant to the social worker's alleged conduct. The social worker acquired the properties over a period of several years. Between February 2013 and October 2016, he arranged/approved service users to live at the properties and also assisted with, or made/submitted, funding applications to enable services users to be placed at the properties. There was ample opportunity for the social worker during this period to declare his conflict of interest of him and/or Person A owning the six properties concerned. He did not despite the responsibility in the Code for employees to adhere to its requirements at all times. Having considered all of the above, the panel found particular 2 proved.

Particular 3 – proved

3. Breached confidentiality in that you:

(a) On the following dates, sent emails to Person A containing information about service users:

(i) 28 April 2014;

(ii) 7 May 2014;

(iii) 9 May 2014;

(iv) 26 May 2016.

(b) Sent emails from your work email address to your personal email address which contained information about service users.

68. The panel had regard to the evidence of Witness 1 and Witness 2. Witness 1 exhibited a number of emails. These emails were obtained by Witness 2 during the audit when Witness 2 accessed the social worker's work email account. The emails showed that the social worker had sent confidential service user information to his personal email address and to the work email address of Person A. Person A was the social worker's wife and was not an employee of the Council.

69. In coming to its decisions on the stem of particular 3, the panel noted the Council's Code of Conduct which stated that employees must not pass on any information

received or obtained through their employment to anyone who is not entitled to have that information and must not use information for personal advantage. The Code states that employees must work within the requirements of the Data Protection Act 1998 and observe the Council's procedures for the release of personal information held about members of the public. The panel considered that members of the public included service users. In each particular and sub-particular considered below, the panel concluded that the social worker had breached confidentiality. The social worker was bound by the Council's Code of Conduct at all times during his employment.

Particular 3(a)(i) – proved

70. On 28 April 2014, the social worker sent an e-mail to Person A attaching a Mental Capacity Assessment (MCA) pertaining to a service user. The panel viewed the contents of the e-mail which was addressed to Person A from the social worker and attached the MCA. The MCA detailed the service user's medical history and the effect of their medical conditions on their day to day living. Person A replied to the social worker's email on the same date attaching the same MCA document. The panel was satisfied that the contents of the email breached confidentiality as it contained personal information about a service user. Accordingly, the panel found this particular proved.

Particular 3(a)(ii) – proved

71. On 7 May 2014 the social worker sent an e-mail to Person A. The panel viewed the contents of the e-mail which was addressed to Person A from the social worker. The email included a draft message requesting guidance in regard to a care pathway for a service user. The email detailed the service user's recent care and assessments as well as the names of the service user's mother and brother. The panel was satisfied that the contents of the email breached confidentiality as it contained personal information about a service user. Accordingly, the panel found this particular proved.

Particular 3(a)(iii) – proved

72. On 9 May 2014 the Social Worker sent an e-mail to person A containing a draft assessment pertaining to a service user. The panel viewed the contents of the email which was addressed to Person A from the social worker. The email included an assessment with extensive detail regarding a service user's care needs, personal data including medical information, and social care history. On the same date Person A replied to the social worker's email. The panel was satisfied that the contents of the email breached confidentiality as it contained personal information about a service user. Accordingly, the panel found this particular proved.

Particular 3(a)(iv) – proved

73. On 25 May 2016 the Social Worker sent an e-mail to Person A attaching a Social Circumstances Report pertaining to a service user. The panel viewed the email, which was addressed to Person A from the social worker, and the contents of the Social Circumstances Report. The report detailed personal information about the service user including their family history, medical conditions, living and financial arrangements. The panel was satisfied that the contents of the email breached confidentiality as it contained personal information about a service user. Accordingly, the panel found this particular proved.

Particular 3(b) – proved

74. In relation to particular 3(b), the social worker sent e-mails from his work e-mail address to his personal e-mail address containing confidential service user information on 22 October 2014 and 29 October 2014. The panel had regard to the contents of the emails and the attachments. The attachments contained information as to why each of the service users were vulnerable, including references to their medical conditions, and in which accommodation they were residing. The panel was satisfied that the contents of the emails breached confidentiality as the emails contained personal information about service users. Accordingly, the panel found this particular proved.

Particular 4 – proved

4. *Your actions at paragraphs 1 and / or 2 were dishonest.*

75. The panel considered each particular in two parts by applying the guidance from the Supreme Court decision in *Ivey v Genting Casinos [2017] UKSC 67 (at para 74)* [the Ivey test]. In applying the Ivey test, the panel first decided the social worker's knowledge or belief as to the factual circumstances of his conduct as set out in particulars 1 and 2 of the Allegation. The panel understood that the social worker's belief did not have to be reasonable, so long as it was genuinely held. The panel then considered whether, based on the factual circumstances it had found, the social worker's conduct was dishonest by the (objective) standards of ordinary decent people. The panel understood that there was no requirement that the social worker must appreciate that what he had done was, by those standards, dishonest.

Particular 1(a) and 1(b) – (Dishonesty) – Found Proved

76. In relation to particular 1(a) and 1(b), the panel concluded that the social worker's knowledge and belief at the time was that he and/or Person A owned or jointly owned the six properties, and that he and/or Person A were liable for the Council Tax for the properties. The social worker had not declared the direct conflict of interest to the Council which he was under a duty to declare in accordance with the Council's Code of Conduct. The social worker assisted with, submitted and/or made funding applications to enable services users to be placed at the same properties he and/or Person A owned. He used his position as a Social Worker and Senior Practitioner (Delivery) at the Council to make a financial gain.

77. The panel was satisfied that the social worker was in no doubt as to his true position, in relation to the properties he and/or Person A owned. It was noted by the panel that the social worker had falsely declared to his employer that he did not have ownership of one of the properties when he did in fact jointly own this property with Person A. The social worker deliberately concealed his and/or Person A's ownership of the properties from the Council by omitting to complete a Potential Conflict of Interest form between February 2013 and October 2016.
78. In these circumstances, and applying the Ivey test, the panel had no hesitation in finding that the social worker was dishonest when he arranged and/or approved for service users to reside at the properties, and that he was also dishonest when he assisted, submitted and/or made funding applications to enable service users to be placed at the same properties. The social worker gained financially from his conduct and the panel was satisfied that an ordinary, decent person would judge the social worker's conduct to be dishonest.

Particular 2 – (Dishonesty) – Found Proved

79. The panel determined that the social worker's knowledge and belief between February 2013 and October 2016 was that he knew he ought to have declared the conflict of interest in relation to the placement of services users into properties owned by him and/or Person A to his employer. It was written in the General Code of Conduct of the Council which the social worker was made aware of when taking up employment. The social worker was in no doubt as to his true position regarding the duty to declare the conflict of interest to the Council.
80. Applying the second limb of Ivey, the panel found that the social worker was dishonest. The social worker had a period of over three years in which to declare his conflict of interest to his employer but made no attempt to do so. The panel was satisfied that an ordinary, decent person would judge the social worker's conduct to be dishonest.

Finding and reasons on grounds

81. Ms Watts submitted, on behalf of Social Work England, that the facts found proved involved findings of dishonesty where the social worker had used his professional position to financially gain from vulnerable service users in his care. She submitted that the social worker's conduct was therefore serious and amounted to professional misconduct.
82. The panel accepted the advice of the Legal adviser.
83. With regard to misconduct, the panel bore in mind the guidance of Lord Clyde in *Roylance v GMC* [No 2] 2000 1 AC 311. It noted that misconduct involved an act or omission which fell short of what would be proper in the circumstances and that not every falling short of the expected standard amounts to misconduct: the falling short must be serious and one which would attract a degree of strong public disapproval,

and may be considered deplorable by other professionals, *Nandi v GMC [2004] EWHC 2317*. The panel further bore in mind that the issue of misconduct was a matter for its own judgment and that there is no standard of proof to be applied at this stage.

84. In coming to a decision on the grounds, the panel first considered the individual particulars found proved and then the social worker's behaviour in the round.
85. The panel considered that the social worker's dishonest conduct in arranging and assisting and/or making funding applications for service users to be placed in accommodation owned by him and/or Person A, whereby he benefitted financially from public sector funds, was serious. He had abused his privileged position as a Social Worker which entrusted him to act in the best interests and welfare of vulnerable service users in his care. Instead the social worker deliberately and dishonestly facilitated the placement of a number of vulnerable service users into the properties over a period of at least three years.
86. Social Workers are expected to be honest and trustworthy in both their personal and professional behaviour. Social Workers deal with service users in their homes at times when they are particularly vulnerable. The importance of honesty and integrity in a Social Worker could not be underestimated. The panel therefore concluded that the social worker's dishonest conduct in particular 1 and 4 would be viewed as deplorable and amounted to misconduct.
87. The panel found that the social worker's actions in respect of failing to declare his conflict of interest and the breaches of confidentiality fell seriously short of what would have been proper in the circumstances. The panel was in no doubt that fellow members of the profession would consider that failing to declare ownership of properties in which the social worker placed service users to benefit himself and/or Person A financially, and sending work emails containing personal details of vulnerable service users to his personal email address and that of Person A's email address, to be deplorable conduct.
88. The panel had regard to the Council's Code of Conduct, which the social worker was expected to adhere to at all times, and Witness 1's evidence. Witness 1 stated that emails sent to addresses outside of the Council may have been insecure and therefore the social worker had risked highly confidential information being accessed by people who did not have the right to see it. The panel noted that the social worker's failure to declare his personal conflicts of interest continued until his departure from the Council. The panel had determined that the social worker's conduct of not informing his employer of his and/or Person A's ownership of the properties in which service users were placed in to be dishonest. The panel therefore concluded that the social worker's behaviour in respect of particulars 2, 3 and 4 amounted to misconduct.

89. In reaching its decision on misconduct the panel found that the social worker had breached the HCPC Standards of Conduct, Performance and Ethics, as set out below.

90. In relation to matters before 26 January 2016, the panel found the social worker to be in breach of the following parts of the HCPC Standards of Conduct, Performance and Ethics (2012 to 26 January 2016):

Standard 1: You must act in the best interests of service users.

Standard 2: You must respect the confidentiality of service users.

Standard 13: You must behave with honesty and integrity and make sure that your behaviour does not damage the public's confidence in you or your profession.

91. In relation to matters after 26 January 2016, the panel found the social worker to be in breach of the following parts of the HCPC Standards of Conduct, Performance and Ethics (2016 to present):

Standard 9: Personal and professional behaviour

9.1 You must make sure that your conduct justifies the public's trust and confidence in you and your profession.

9.4 You must declare issues that might create conflicts of interest and make sure that they do not influence your judgement.

Standard 5: Respect Confidentiality

Using information

5.1 You must treat information about service users as confidential.

Disclosing information

5.2 You must only disclose confidential information if:

- you have permission;*
- the law allows this;*
- it is in the service user's best interests; or*
- it is in the public interest, such as if it is necessary to protect public safety or prevent harm to other people.*

92. Accordingly the panel concluded that in its judgment, all of the factual particulars found proved amounted to misconduct.

Finding and reasons on current impairment

93. Having found misconduct, the panel went on to consider whether, as a result of that misconduct, the social worker's current fitness to practise was impaired. Impairment was a matter for the judgment of the panel. The panel kept in mind that not every finding of misconduct will necessarily result in a conclusion that fitness to practise is currently impaired.
94. The panel weighed up all of the evidence and the submissions made by Ms Watts. The panel accepted the advice of the Legal adviser who advised the panel to consider Dame Janet Smith's comment in the *5th Report to the Shipman Inquiry* where she identified four matters for consideration when considering whether a practitioner's fitness to practise is impaired: do the panel's findings of fact in respect of the practitioner's misconduct show that his fitness to practise is impaired, in the sense that he:
- (a) has in the past acted and/or is liable in the future to act so as to put a service user or service users at unwarranted risk of harm; and/or
 - (b) has in the past brought and/or is liable in the future to bring the Social Work profession into disrepute; and/or
 - (c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the Social Work profession: and/or
 - (d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.
95. The Legal adviser reminded the panel, in accordance with the case of *Cohen v General Medical Council* [2008] EWHC 581, that it was relevant to consider remediation, risk and repetition of risks identified. In so doing the panel would need to examine whether or not the social worker had demonstrated insight into his behaviour.
96. With respect to dishonesty the Legal adviser said that it would be wrong for the panel to approach the issue of impairment by assuming that any allegation of dishonesty found proved automatically resulted in a finding of impairment. She advised the panel that when considering dishonesty and impairment it should take into account the nature of what occurred, including whether the dishonesty required forethought and planning, the seriousness of the potential outcome of the dishonest actions, harm, and the surrounding circumstances.
97. She also advised the panel to consider the public interest in accordance with the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant* [2011] EWHC 927 (Admin). She urged the panel to consider the guidance provided by Social Work England on the meaning of impairment, provided in its Sanctions Guidance and Social Work England's over-arching objective.

98. The panel accepted the advice of the Legal adviser and had regard to Social Work England's Sanction's Guidance on Impairment. The panel considered the social worker's fitness to practise at today's date.
99. The panel considered that dishonesty is always hard to remediate. However, it noted that the social worker, to date, had not provided any evidence demonstrating that he had any insight into his behaviour. The panel had regard to a document in the bundle dated 7 October 2016 detailing a conversation between JA (a Council employee) and the social worker. JA stated that the social worker provided his resignation in writing and said that "he had been a fool" and "that he should have gone years ago". The panel considered that this response from the social worker was not evidence that demonstrated insight of the impact of his conduct on service users, the public and the profession.
100. The panel noted that Witness 1 had spoken positively of the social worker's competency. Witness 1 told the panel that the social worker was "very involved", and that "he would go the extra mile and give degrees of flexibility and would try and accommodate". Witness 1 stated "as a Senior Practitioner Delivery, I found him to be quite supportive". However, the panel considered that the evidence of the social worker's competency was undermined by the harm caused to the service users in his care. Person J, the mother of Service User A felt the social worker had "manipulated the situation to have Service User A moved to a property that he (Mr S) either owns or belongs to a family member of his". She questioned whether the social worker had deprived Service User A of the support which was needed. Witness 1 stated that "psychologically and emotionally, the social worker abused his power over Service User A" and that the social worker "isolated Service User A and his mother by stating who they could and could not discuss Service User A's care with".
101. In relation to other service users, the panel noted Witness 1's evidence that the social worker's conduct had affected the service users physically and financially because he took advantage of their vulnerable status and manipulated their residential arrangements and financial provision of support to benefit himself and/or Person A.
102. There was no evidence before the panel that the social worker acknowledged that he had done anything wrong or that his actions had adversely impacted on the service users. Although some of the social worker's misconduct was capable of remediation in theory, there was no evidence of remediation having been attempted or achieved. The social worker had not engaged with the Council's investigation, or these proceedings. The only communication before the panel from the social worker was an email addressed to Social Work England dated 9 July 2020 in which the social worker requested voluntary removal from the register. In the absence of any insight and remediation, the panel determined that there was a risk of repetition of the social

worker placing service users at unwarranted risk of harm in the future, and that this risk was high.

103. The panel next considered the wider public interest considerations including the need to maintain public confidence in the profession and uphold standards of conduct and behaviour. The panel had determined that the social worker remained a direct risk to service users. His conduct represented a serious breach of one of the fundamental tenets of the Social Work profession. Social Workers are autonomous professionals and therefore need to be trustworthy and for the public to have confidence that they are acting with honesty and integrity at all times. The social worker's conduct in placing his own self interests over the interests of services users had brought the profession into disrepute. The panel considered that all four limbs of the criteria identified by Dame Janet Smith in the 5th Shipman Report were engaged in this case.

104. The panel was satisfied that a fully informed member of the public, who was aware of all the background to this case, would have their confidence in the profession and Social Work England undermined if a finding of impairment was not made, given the nature and seriousness of the social worker's misconduct which included dishonest conduct for his own financial gain.

105. An informed member of the public would also be concerned that the social worker had disclosed sensitive information about service users to others outside of his employment, and failed to declare his personal conflicts of interests. There was, therefore, a very significant public interest component in this case.

106. Accordingly, the panel concluded that the social worker's fitness to practise was currently impaired on both public protection and public interest grounds and that the allegation of impairment was well founded.

Decision on sanction

107. Ms Pitters, on behalf of Social Work England, submitted that the panel's findings were so serious that the social worker should be removed from the register. She referred the panel to the Sanctions Guidance and highlighted to the panel the paragraphs on abuse of position of trust and dishonesty. She reminded the panel to work its way through each sanction, starting with the least restrictive whilst bearing in mind the principle of proportionality. Ms Pitters submitted that this case involved repeated dishonesty for financial gain and that the panel had found actual harm had been caused to service users; there was no insight and remediation from the social worker. She listed the aggravating features and submitted that a removal order was the only sanction that would protect the public and uphold the public interest.

108. The legal adviser advised the panel to consider any aggravating and/or mitigating factors in the case, and to approach the range of available sanctions in

ascending order of seriousness. She advised that the purpose of sanction is not to be punitive, but is to protect the public, maintain public confidence in the profession and declare and uphold proper standards of conduct and behaviour. She advised the panel to act proportionately, balancing the interests of the social worker with those of the public. She drew the attention of the panel to the relevant sections of the Sanctions Guidance.

109. In considering which, if any, sanction to impose the panel had regard to the Sanctions Guidance (November 2019) and the advice of the legal adviser.

110. The panel reminded itself that the purpose of imposing a sanction was not to punish the social worker, but to protect the public and the wider public interest. The panel ensured that it acted proportionately, and in particular it sought to balance the interests of the public with those of the social worker to impose the sanction which was the least restrictive in the circumstances commensurate with its role of protection.

111. The panel considered that the aggravating features included the following:

- The misconduct took place over a significant period of time and involved serious breaches of the HCPC's Codes of Conduct
- The misconduct took place in the course of the social worker's professional duties and was an abuse of trust towards both his employer and service users
- The social worker was the supervising Social Worker intermittently during the period in which some of the misconduct took place
- The social worker's dishonesty involved financial gain, and failures to declare conflicts of interest to his employer
- The social worker's misconduct was pre-meditated
- There was evidence of actual harm caused to service users
- There was no insight from the social worker
- There was no remediation from the social worker
- There was no reflection by the social worker of the impact of his actions on the regulatory bodies, his profession and on service users.

112. In the absence of the social worker, the panel had no evidence before it of any mitigating factors.

113. The panel concluded that in view of the seriousness of the misconduct, to take no further action, or to impose an advice or warning order, was clearly insufficient, would not address the risk of repetition the panel had identified and would not be sufficient to maintain public confidence in the profession.
114. The panel concluded that a conditions of practice order would be insufficient to meet the seriousness of the misconduct. The allegation concerned the behaviour of the social worker where dishonesty for financial gain and failure to declare conflicts, had been proved. The panel found deep seated attitudinal issues with the social worker who had on a number of occasions, particularly with Person J, used his position to cover up his misconduct. The panel considered that conditions could not be formulated to address the social worker's dishonesty. A conditions of practice order would not address wider public interest concerns identified in the panel's decision on impairment.
115. The panel considered a suspension order. The panel took into account the aggravating features of the case. It had regard to paragraphs 106 to 109 of the Sanctions Guidance. The panel reminded itself of its earlier findings. This case involved a finding of impairment based on repeated and prolonged dishonesty, failures to declare conflicts of interests, and breaches of confidentiality that involved highly sensitive information about service users being communicated outside of the Council. There was no insight from the social worker, no evidence of remorse or remediation and there was a lack of engagement with the regulatory process. The panel considered that, in light of the social worker's email of 9 July 2020 in which he requested voluntary removal from the register, the social worker was not motivated to remediate his conduct and did not want to continue working as a Social Worker. The panel concluded that the continuing risk to the public, failure to remediate, no insight into the gravity of his dishonesty, and the need to uphold the reputation of the profession in the eyes of the public made a suspension order inappropriate because it was inadequate to reflect the seriousness of the case.
116. For those reasons the panel concluded that a removal order was the only sufficient, proportionate and appropriate sanction to impose. The aggravating features of this case placed it at the highest end of the spectrum. The Social Work profession requires a high degree of trust as vulnerable people rely on a Social Workers integrity in making decisions that affect their lives. Any individual dishonesty is likely to threaten public confidence in the proper discharge of these responsibilities. It is the judgment of the panel that the social worker remains a risk to the public, and that only a removal order was sufficient to protect the public from the social worker. It was also the judgment of the panel that a removal order was required to declare and uphold proper standards of behaviour and maintain confidence in the profession and its regulator.

117. The panel had no information about the social worker's circumstances to enable it to assess the impact of any restriction on his practice. However, the panel decided that any financial and reputational interests of the social worker would be outweighed by the need to protect the public and the wider public interest considerations.
118. In conclusion, the panel decided that the appropriate and proportionate order is one of removal from the register.

Interim order

119. Ms Pitter applied for an interim order of suspension. She submitted that an interim order was necessary in order to protect the public by preventing the social worker from practising during any appeal period.
120. The legal adviser advised that in accordance with Paragraph 11 of Schedule 2 of The Regulations the panel may make any interim order it considered is necessary for the protection of the public or in the best interests of the social worker. She also advised that the order can only be made if it is necessary and must not be merely desirable. She reminded the panel of the over-arching objective and that it must consider first whether an interim conditions of practice order would be sufficient. She confirmed that the existing interim order of suspension will lapse at the next renewal date.
121. The panel were aware from documentation in the service bundle that an interim suspension order was already in force having been made by another panel prior to this hearing but this interim order would be allowed to lapse at the next renewal date.
122. For the reasons set out above, the panel was satisfied that there remained a real risk that the social worker would repeat his behaviour if he was permitted to practise unrestricted, and concluded that an interim order was necessary to protect the public. For the reasons also set out in its substantive decision the panel was also satisfied that an interim order was required in the wider public interest in that an ordinary member of the public would be shocked to learn that the social worker was entitled to practise if an order was not made. Accordingly, the panel was satisfied that an interim order was required on the grounds of public protection and in the public interest. The panel considered whether an interim conditions of practice order would be sufficient in the circumstances, but concluded, for the same reasons as set out in its substantive decision, that such an order would be insufficient in the circumstances of this case.

123. For the reasons above, the panel concluded that an interim order of suspension was necessary for the protection of the public and was also required in the public interest.

124. Accordingly the panel made an interim order of suspension under Paragraph 11 of Schedule 2 of The Social Workers Regulations 2018. The length of this order is dictated by Paragraph 11 (3) (b) which states that where there is no appeal against the final order, the order will expire when the period for appealing expires, and where there is an appeal against the final order, the order expires when the appeal is withdrawn or otherwise finally disposed of.

Right of Appeal

1. Under paragraph 16 (1) (a) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social worker may appeal to the High Court against the decision of adjudicators:
 - (i) to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
 - (ii) not to revoke or vary such an order,
 - (iii) to make a final order.
2. Under paragraph 16 (2) schedule 2, part 5 of the Social Workers Regulations 2018 an appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.
3. Under regulation 9(4), part 3 (Registration of social workers) of the Social Workers Regulations 2018, this order can only be recorded on the register 28 days after the Social Worker was informed of the decision or, if the social worker appeals within 28 days, when that appeal is exhausted.
4. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.

Review of final orders

5. Under paragraph 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:
 - 15 (2) – The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the social worker.

- 15 (3) A request by the social worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.
- 6. Under rule 16 (aa) of Social Work England’s fitness to practise rules, a registered social worker requesting a review of a final order under paragraph 15 of Schedule 2 must make the request within 28 days of the day on which they are notified of the order.

European alert mechanism

7. In accordance with Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015, Social Work England will inform the competent authorities in all other EEA States that the social worker’s right to practise has been prohibited or restricted.
8. The social worker may appeal to the County Court against Social Work England’s decision to do so. Any appeal must be made within 28 days of the date when this notice is served on the social worker. This right of appeal is separate from the social worker’s right to appeal against the decision and order of the panel.