

Social Worker: Leo W Kirk

Registration Number: SW27774

Fitness to practise: Final hearing

Dates of hearing: 6 January 2021 – 8 January 2021

Hearing Venue: Remote hearing

Hearing outcome: Removal Order

Interim 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 Leo Kirk ('the social worker') did not attend and was not represented.
3. Social Work England was represented by Ms Kathryn Pitters, a barrister from Capsticks LLP.

Adjudicators	Role
Claire Cheetham	Chair
Christine Moody	Social Worker Adjudicator
Lorna Taylor	Lay Adjudicator

Jyoti Chand	Hearings Officer
Robbie Morgan	Hearing Support Officer
Margaret Obi	Legal Adviser

Service of Notice:

4. The panel of adjudicators ('the panel') took into account the documents contained in the final hearing service bundle which included:
 - An extract from Social Work England Register ('the Register') confirming the social worker's registered postal and email address;
 - A copy of the Notice of Hearing, dated 2 December 2020, addressed to the social worker's postal and email addresses as they appear on the Social Work England Register;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 4 December 2020, a paralegal from Capsticks LLP sent the Notice of Hearing and related documents to the social worker's registered email address.
5. The panel accepted the advice of the legal adviser in relation to service of notice.

6. The panel was satisfied that the Notice of Hearing had been properly served on the social worker in accordance with Rules 44 and 45 of the Fitness to Practise Rules (the Rules)

Proceeding in the absence of the social worker:

7. Ms Pitters, on behalf of Social Work England, made an application under Rule 43 for the hearing to proceed in the absence of the social worker. She informed the panel that there has only been limited engagement from the social worker, in that, he had not responded to the contents of the evidence bundle nor had he responded to the statement of case. Ms Pitters invited the panel to conclude that the social worker's absence was deliberate and voluntary and that it is in the public interest for the hearing to be concluded as expeditiously as possible.
8. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering the application to proceed in the social worker's absence. This included reference to the cases of *R v Jones [2003] UKPC* and *General Medical Council v Adeogba [2016] EWCA Civ 162*.
9. The panel noted that in an email to Social Work England, dated 16 November 2020, the social worker stated:

"I don't have anything further to add to my statement. I have stated on numerous occasions that I have not practiced as a social worker since December 2016. I have also stated that I accept full responsibility and deep regret for my unprofessional actions. I have informed Social work England that I intend to let my current registration lapse and will not be renewing my registration now or in the foreseeable future (sic). To be clear, I don't promote or "call myself " a Social worker and have not done so for some time. I swore under oath in court nearly a year ago to this point. I have now reached a stage where I have moved on with my life as I need to for my own sake and the sake of my family. I have made mistakes, and I believe I have accepted and acknowledged this in all of my correspondence with both HCPC and Social Work England. Now please allow me to move on with my life".

10. The panel determined that it was fair, reasonable and in the public interest to proceed in the social worker's absence for the following reasons:
 - a. The social worker has only engaged with the regulatory process on a limited basis. In his email, dated 16 November 2020, he stated in clear terms that he does not wish to remain on the Register. In these circumstances, the panel was satisfied that it was reasonable to conclude that the social worker's non-attendance and non-

participation is voluntary and demonstrates a deliberate waiver of his right to attend and to be represented.

- b. The social worker did not make an application for the hearing to be adjourned and there was no indication that he would be willing to attend on an alternative date. Therefore, re-listing this substantive hearing would serve no useful purpose.
- c. Social Work England had made arrangements for a witness to give evidence during this hearing. In the absence of any reason to re-schedule the hearing the panel was satisfied that the witness should not be inconvenienced by an unnecessary delay.
- d. The panel recognised that there may be a disadvantage to the social worker in not being able to make oral submissions. However, he was given the opportunity to participate and chose not to do so. In these circumstances, the panel concluded that any disadvantage to the social worker was significantly outweighed by the public interest in ensuring that the substantive hearing is commenced and concluded as expeditiously as possible.

Background

11. On 21 May 2018, the Health and Care Professions Council (HCPC) received a referral regarding the social worker. The referral was made by Mrs Sabe Connor a director at Holywell Care Services ('Holywell') where the social worker was employed as Regional Manager for Children's Services.
12. On 2 December 2019, responsibility for the regulation of social workers was transferred from the HCPC to Social Work England.
13. Social Work England alleged that the social worker did not inform his employer that he was subject to HCPC disciplinary proceedings and that his social work registration had been suspended on 10 April 2018 at a substantive hearing. The HCPC investigation and subsequent hearing was related to a safeguarding concern that the social worker had borrowed £450 from a vulnerable service user in his care whilst he was employed by Warrington Borough Council. The social worker left Warrington Borough Council in November 2016 and the money was repaid by the social worker on 21 December 2016. At the substantive hearing in April 2018, the Conduct and Competence Committee of the HCPC imposed a 12 month suspension order. The social worker did not attend the HCPC hearing.
14. It is further alleged that the social worker sent emails to a competitor of Holywell, providing personal information regarding service users and confidential information

regarding their processes. These data breaches were reported to the Information Commissioners Office (ICO).

15. The ICO prosecuted the social worker. On 14 January 2020 at Stockport Magistrates' Court the social worker was convicted and fined in relation to two offences contrary to the Data Protection Act 1998.

16. In addition, it is alleged that the social worker made dishonest representations with regard to his qualifications and the last time he had worked as a social worker.

Allegation (as amended)

17. The Allegation as amended at the outset of the hearing is as follows:

Whilst registered with the Health and Care Professions Council (HCPC) as a Social Worker, your:

- 1. Did not inform your employer, Holywell Care Services, that;
 - I. you were subject to fitness to practise proceedings by the HCPC*
 - II. Your registration was subject to a Suspension Order for a period of 12 months on 10 April 2018**
- 2. Breached service-user confidentiality in that you forwarded the following documents relating to identifiable service users to Company A:
 - I. placement request referral and assessment*
 - II. risk assessments.**
- 3. Gave Company A log in details and/or passwords for them to access Holywell Care Service's service-user database and/or service user referrals.*
- 4. Were convicted on 14 January 2020 at Stockport Magistrates' Court for the following offences:
 - I. Between 12-04-18 and 27-04-18 at Stockport, without the consent of the data controller, knowingly or recklessly disclosed personal data. Contrary to Section 55 (3) and 60 (2) of the Data Protection Act 1998*
 - II. Between 12-04-18 and 27-04-18 at Stockport, without the consent of the data controller, knowingly or recklessly discussed personal data. Contrary to sections 55 (3) and 60 (2) of the Data Protection Act 1998**
- 5. You made the following material misrepresentations:*

- I. *Informing the HCPC by email on 28th March 2019 that you had not worked as a social worker since December 2016*
- II. *Including the words BA Hons. following your signature, in emails to OFSTED on 4th May 2018 and Company A on 27th April 2018, when you did not hold this qualification*

6. *Your conduct in paragraphs 1, 2, 3 and 5(i) above constitutes dishonesty. The matters set out in paragraphs 1, 2, 3, and 5 amounts to misconduct. The matters set out in paragraph 4 constitute a criminal conviction.*

By reason of your misconduct and/or criminal conviction, your fitness to practise is impaired.

Application to Amend

18. Ms Pitters made an application at the outset of the hearing to amend the Allegation by discontinuing the original Charge 2 (visit to a service user on 19 April 2018) and the associated dishonesty allegation on the basis that there was insufficient evidence to support these charges. She informed the panel that during the investigation stage it became apparent that 19 April 2018 was wrong, and that the correct date of the visit did not occur during the period of the social worker's HCPC suspension. Ms Pitters also made an application to amend the wording to the stem of Charge 6 and correct grammatical errors in Charge 1 and the original Charge 5. In addition, Ms Pitters invited the panel to amend the numbering in the event that the proposed discontinuance of the original Charge 2 is accepted.
19. The panel was satisfied that the discontinuance of the original Charge 2 and amendments to the Allegation could be made without causing prejudice to the social worker. The panel concluded that there was no public interest in pursuing a charge that had no realistic prospect of being found proved. The panel also concluded that the remaining proposed amendments were minor in nature in that they contained one or more of the following features:
 - corrected a typographical error;
 - provided helpful clarification;
 - avoided ambiguity;
 - more accurately reflected Social Work England's case.

Summary of Evidence

20. The panel, in reaching a determination on the facts, took into account the following evidence as adduced on behalf of Social Work England:
 - A witness statement from Mrs Sabe Connor, dated 29 July 2020, and associated exhibits including the social worker's employment application form

(dated 1 July 2017), his curriculum vitae and covering letter, his HCPC registration certificate, his diploma in social work, a news article dated 18 April 2017, various email correspondence, service user documents and Holywell's policies.

- The oral evidence of Ms Sabe Connor;
- A Certified Memorandum of Conviction;
- The HCPC's Conduct and Competence Panel determination (9-10 April 2018).

21. During the fact-finding stage Mrs Connor also provided the panel with the following additional documents:

- The social worker's job description;
- A payslip dated 20 July 2017.

Finding and reasons on facts

The panel's approach

22. The panel accepted the advice of the legal adviser.
23. The panel was aware that the burden of proving the facts was on Social Work England. The social worker did not have to prove anything and the particular of the Allegation could only be found proved, if the panel was satisfied, on the balance of probabilities.
24. In reaching its decision the panel took into account the documentary evidence including the Memorandum of Conviction. The panel was aware that it could not go behind the conviction and was required to accept the certification from Stockport Magistrates' Court as conclusive proof of the conviction itself and the underlying facts.
25. The panel noted that following the Supreme Court decision in *Ivey v Genting Casinos* [2017] UKSC 67 the test for dishonesty is an objective test only. The panel first had to determine the social worker's actual knowledge or belief and then determine whether his act or omission was, on the balance of probabilities, dishonest by the ordinary standards of reasonable and honest people.

The Stem of the Allegation

26. The panel was provided with a HCPC certificate of registration which confirmed that the social worker was registered with the HCPC under registration number SW27774 from 1 December 2016 - 30 November 2018. The certificate is signed by the Chief Executive and Registrar and by the Chair of the HCPC.
27. The panel accepted the documentary evidence as conclusive proof that during the relevant period the social worker was registered with the HCPC.

Charge 1 (I. and II.) – Found Proved;

Charge 6 – (Dishonesty - in relation to Charge 1) – Found Proved

“Did not inform your employer, Holywell Care Services, that;

- I. you were subject to fitness to practise proceedings by the HCPC*
- II. Your registration was subject to a Suspension Order for a period of 12 months on 10 April 2018”*

28. The panel accepted Mrs Connor’s witness statement as her evidence in chief. In her statement she stated that the social worker was employed as the Regional Manager for Holywell. She stated that when the social worker applied for the role, he provided his CV, which included details of his HCPC registration number. The social worker also provided a completed application and his HCPC registration certificate. Mrs Connor stated that the role required the social worker to be registered as a social worker for a number of reasons including the need for him to operate as Holywell’s internal social worker, conduct visits to service users and help to set up OFSTED registered children’s homes for Holywell. The social worker stated in the application form that he had left his previous employment at Warrington Borough Council because the contract came to an end. The application form asked if he had ever been dismissed or asked to resign from any employment, or if he had ever been subject to formal disciplinary action in any employment. The social worker answered both of these questions with “no” and “N/A”.

29. During her oral evidence Mrs Connor stated that the social worker started his employment with Holywell on or before 9 July 2017. She provided the panel with a payslip dated 20 July 2017. She stated that the amount paid to the social worker was for a day’s pay and the payroll cut-off date is the 9th of the month and for that reason he must have commenced employment by 9 July 2017. Mrs Connor also produced the social worker’s job description during her oral evidence which specified that the applicant for the role had to be registered as a social worker with the HCPC.

30. Mrs Connor stated that after almost a year of working with the social worker, he told her that he and his wife were going to start their own care business. Mrs Connor became suspicious. Her husband conducted a Google search of the social worker’s name and discovered an article for a website called “Crimes UK” . The article provided details of the social worker’s suspension from the HCPC register for borrowing money from a vulnerable service user. Mrs Connor stated that the social worker did not tell her that he was subject to fitness to practise proceedings when he joined Holywell or at any time; nor did he tell her that he had been made subject to a suspension order

when it occurred during his employment. Mrs Connor confirmed during her oral evidence that the social worker last worked for Holywell on 8 May 2018.

31. The panel accepted the evidence of Mrs Connor.
32. The panel noted that although the social worker did not attend the HCPC proceedings he was sent a letter on 10 April 2018 confirming that he had been suspended for a period of 12 months. The outcome letter enclosed a copy of the Competence and Conduct Committee's written determination. The panel also noted that for several months prior to the substantive HCPC hearing (if not longer) the social worker must have been aware that of the HCPC investigation and that at some stage it had been determined that there was a case for him to answer.
33. The panel was satisfied that the social worker had known that he was suspended by the HCPC. The panel was also satisfied that he deliberately withheld information from Holywell because he knew that he would not be employed if Mrs Connor was made aware that he was subject to an ongoing HCPC investigation at the time of his application. Similarly, if the investigation had commenced after the time he joined Holywell, this may have affected his employment. The panel noted that even if the start of the HCPC investigation post-dated 9 July 2017, he would have known, as an experienced social worker, that this was a matter that would be of concern to his employer. He also would have known that he was required to be registered as a social worker for the Regional Manager role and that his suspension from the HCPC register on 10 April 2018 would be of particular concern to his employer.
34. The panel concluded that the social worker's non-disclosure of the investigation and subsequent suspension was a deliberate and conscious attempt to conceal safeguarding concerns from his employer and undermine the authority of his regulatory body. The panel was satisfied that by the ordinary standards of reasonable and honest people the social worker's non-disclosures were dishonest.

Charge 2 (I. and II.) – Found Proved

Charge 6 – (Dishonesty - in relation to Charge 2) – Found Proved

“Breached service-user confidentiality in that you forwarded the following documents relating to identifiable service users to Company A:

- I. placement request referral and assessment*
- II. risk assessments.”*

35. Mrs Connor stated in her witness statement that the social worker was suspended pending an internal investigation once she became aware of the suspension order imposed by the HCPC. The social worker was invited to attend a disciplinary meeting

at Holywell on 14 May 2018 and on the same date, after he failed to attend the meeting, he was sent an email directing him to return his laptop, phone and other devices belonging to Holywell. Mrs Connor stated that she sent the email to the social worker because the devices contained confidential information relating to both clients and service users. Following receipt of the devices, Mrs Connor was unable to open them because they were password protected. Mrs Connor sent a text message to the social worker requesting the passwords. The social worker eventually provided the passwords. Mrs Connor stated that when she opened the computer, she discovered that all the documents and files had been deleted. However, the items were recovered from the recycle bin. Numerous emails were recovered, dated between 5 December 2017 and 25 March 2018, which confirmed that a number of documents had been sent to Company A. The documents contained a number of client and service user documents including placement referrals and risk assessments for numerous service users. There were also emails containing requests for placements from various local authorities including Stockport Metropolitan Borough Council, Tameside Metropolitan Borough Council and Lancashire County Council. Over 29 different service users' information had been sent to Company A.

36. Mrs Connor explained in her witness statement that Holywell had been added to the Placement Northwest framework (which represents 23 local authorities) to provide accommodation and support to vulnerable children between the ages of 16 to 18. Emails are sent from Placement Northwest to organisations via secure email and contain private and confidential information relating to vulnerable children, young people, and their families.
37. The panel accepted the evidence of Mrs Connor which was supported by the documentary evidence. The panel was satisfied that the confidential client and service user documents had been sent by the social worker to Company A. The panel noted that the assessments included confidential information for children, including addresses, dates of birth, ethnicity, and other sensitive information about their individual needs. Furthermore, the assessments contained the service users' legal status, health information, and details of previous sexual, physical, or mental abuse. Some of these assessments also contained the same sensitive information regarding their families. The panel was satisfied that the requests for placement were meant for Holywell and should not have been passed to a third party. There was no legitimate reason for the social worker to have passed this information on to Company A. By sending client and service user information to a third party the social worker breached Holywell's internal policies and fundamental principles of service user confidentiality.
38. The panel was satisfied that the social worker knew that the emails he sent to Company A were confidential and should not have been provided to a third party

without his employer's consent. Furthermore, the social worker was part of an internal working group that developed Holywell's policies in preparation for the GDPR legislation that came into force on 28 April 2018. Holywell had an internal working group made up of the social worker and other senior employees. The group implemented the framework for data security policies for Holywell to ensure it was compliant with GDPR and the Data Protection Act 2018. In choosing to send the emails the social worker breached the trust of his employer.

39. The panel concluded that the social worker's breaches of confidentiality was deliberate and conscious. The panel was satisfied that by the ordinary standards of reasonable and honest people, the social worker's breaches of confidentiality were dishonest.

Charge 3 – Found Proved

Charge 6 – (Dishonesty - in relation to Charge 3) – Found Proved

"Gave Company A log in details and/or passwords for them to access Holywell Care Service's service-user database and/or service user referrals."

40. Mrs Connor, in her witness statement, stated that the emails that the social worker forwarded to Company A included passwords that were provided to Holywell Children's Services by various local authorities which enabled the third party to access the documents. Mrs Connor's evidence was supported by documentary evidence which confirmed that the passwords had been passed on to Company A.

41. For the same reasons stated in paragraph 35 above the panel concluded that by the ordinary standards of reasonable and honest people the social worker's actions in providing Company A with the log in details and/or passwords in order to access Holywell's service user database and/or service user referrals were dishonest.

Charge 4 – Found Proved

Charge 6 – (Dishonesty - in relation to Charge 4) – Found Proved

"Were convicted on 14 January 2020 at Stockport Magistrates' Court for the following offences:

- I. Between 12-04-18 and 27-04-18 at Stockport, without the consent of the data controller, knowingly or recklessly disclosed personal data. Contrary to Section 55 (3) and 60 (2) of the Data Protection Act 1998*
- II. Between 12-04-18 and 27-04-18 at Stockport, without the consent of the data controller, knowingly or recklessly discussed personal data. Contrary to sections 55 (3) and 60 (2) of the Data Protection Act 1998*

42. The panel was provided with a Memorandum of Conviction in the name of the social worker, which was signed by an officer of the court. The panel accepted the Memorandum of Conviction as conclusive evidence that on 14 January 2020 the social worker pleaded guilty to two offences under the Data Protection Act 1998 and was therefore convicted of these offences. The panel noted that the social worker was ordered to pay a fine, costs and a surcharge to fund victim services.
43. The panel concluded, for the reasons set out in paragraph 35 above, that by the ordinary standards of reasonable and honest people the social worker's actions in knowingly disclosing personal data to Company A was dishonest.

Charge 5 – Found Proved (in relation to Charge 5(I.); **Found Not Proved** (in relation to Charge 5(II.))

Charge 6 – (Dishonesty - in relation to Charge 5(I.) – Found Proved

“You made the following material misrepresentations:

- I. Informing the HCPC by email on 28th March 2019 that you had not worked as a social worker since December 2016*
- II. Including the words BA Hons. following your signature, in emails to OFSTED on 4th May 2018 and Company A on April 27th, 2018, when you did not hold this qualification”*

44. The panel noted that the social worker sent an email to the HCPC on 28 March 2019 in which he stated that he had *“not practised as a social worker since December 2016.”* This was in conflict with the witness statement of Mrs Connor and her oral evidence. She stated that it was a requirement of the social worker's role that he was a registered social worker in order to, amongst other things, conduct visits to service users and help to set up OFSTED registered children's homes for Holywell.
45. The panel accepted the evidence of Mrs Connor. The panel concluded that the absence of a caseload, as indicated by the social worker in his email to HCPC, did not mean that he was not practising as a social worker. The panel was satisfied that he the social worker was held out as a registered social worker to third parties and that it was a specific requirement within his job description. Therefore the panel concluded that the content of the social worker's email was a material misrepresentation.
46. The panel was satisfied that the social worker knew that his job description required him to be a registered social worker and that, as a consequence, his employment as Regional Manager at Holywell was dependent on that registration. Therefore, the panel was satisfied that at the time the social worker sent the email to the HCPC he knew that his claim that he had not practised as a social worker was untrue. The panel concluded that the social worker sought to minimise the significance of the concerns

that had been raised against him. The panel concluded, by the ordinary standards of reasonable and honest people, that the social worker's actions in deliberately attempting to mislead his regulator was dishonest.

47. Mrs Connor stated in her witness statement that she found an email to OFSTED from the social worker dated 4 May 2018. He had signed off "BA (Hons)". Mrs Connor stated that the social worker holds a DipSWork from 1998 a copy of which was provided to the panel in the exhibits bundle.
48. The panel was invited by Ms Pitters, on behalf of Social Work England, to draw an inference that the social worker does not hold a BA(Hons) degree, at least in part because it was not included on his application form. In response to a query from the panel the registration department of Social Work England confirmed "we did not request that social workers provide any information, including their qualification details or documentation, during the transfer of regulation in December 2019".
49. The panel noted that there is no indication what subject was studied by the social worker for his BA(Hons). Furthermore, the social worker's emails to OFSTED and Company A were sent in May and April 2018. His application form for the Regional Manger role is dated 1 July 2017. In these circumstances, the panel was unable to rule out the possibility that the social worker acquired a BA(Hons) degree after he commenced employment at Holywell.
50. The panel concluded that insufficient evidence had been adduced to find Charge 5(II.) proved.

Finding and reasons on grounds

Panel's Approach

51. Having found the charges proved (save for Charges 5(II.)) the panel went on to consider whether the facts amount to the statutory grounds of conviction and/or misconduct. The panel did not give any further consideration to Charge 5(II.)
52. In considering the issue of misconduct, the panel bore in mind the explanation of that term provided by the Privy Council in the case of *Roylance v GMC (No.2) [2000] 1 AC 311* where it was stated that:

"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a ... practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word 'professional' which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the

word 'serious'. It is not any professional misconduct which will qualify. The professional misconduct must be serious."

Conviction

53. The panel was satisfied that as the social worker's conviction had been found proved as a fact the statutory ground of conviction had been established.

Misconduct

54. The panel noted that registered social workers have a professional obligation to uphold high standards of conduct and behaviour.
55. The social worker withheld information from his employer, breached data protection and confidentiality requirements which resulted in a criminal conviction, and claimed to his regulatory body that he had not practised as a social worker since December 2016.
56. The panel noted that although there was no evidence that actual harm had been caused the risk of harm was high. Service users and their families are likely to lose confidence in the social work profession if they cannot trust that confidential information will be protected and only disclosed with consent or in accordance with a legal requirement. Furthermore, it is essential that local authorities and employers can rely on the professionalism of registered social workers as they are trusted to make assessments based on highly personal and sensitive information. In sending the confidential client and service user information to a third party without permission the social worker chose to put his own interests above the interests of vulnerable service users, their families, the local authorities, his professional obligations and significantly breached his employer's trust. The willingness and ability to adhere to high standards of behaviour at all times is fundamental to the role of a social worker. The social worker's behaviour demonstrates a propensity to put his own interests first and a willingness to recklessly disregard his professional obligations as a registered social worker to service users, his employer, and his regulator.
57. The social worker's actions were dishonest. The panel noted that dishonesty is inherently serious. In this case the panel has found repeated acts of dishonesty directly involving vulnerable children and their families, his employer and his regulator, which places the social worker's behaviour towards the highest end of the spectrum for this type of conduct.
58. The panel considered the HCPC Standards of Conduct, Performance and Ethics [2016] and was satisfied that the social worker's conduct breached the following standards:

5.1 You must treat information about service users as confidential.

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*
- Respect confidentiality*

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

59. The panel was aware that breach of the standards alone does not necessarily constitute misconduct. However, the panel was satisfied that the social worker's conduct fell far below the standards expected of a registered social worker. The panel took the view that members of the public and fellow members of the social work profession would be shocked and appalled by the social worker's course of conduct.

60. The panel concluded that the social worker's dishonest conduct individually and cumulatively amounts to misconduct.

Finding and Reasons on Impairment:

The panel's approach

61. In considering whether the social worker's fitness to practise is currently impaired, the panel took into account the oral submissions of Ms Pitters, on behalf of Social Work England. She invited the panel to conclude that the social worker's fitness to practise is currently impaired.

62. The panel accepted the advice of the legal adviser.

63. In determining current impairment, the panel had regard to the following aspects of the public interest:

- The extent to which the social worker has the skills, knowledge and character to practise their profession safely and effectively without restriction; and
- The wider public interest which includes the need to promote and maintain public confidence in social workers in England and the need to promote and maintain proper professional standards for these social workers.

Decision

64. The panel considered the social worker's current fitness to practise firstly from the perspective of his ability to work safely and effectively as a social worker and then from the perspective of the wider public interest.
65. The social worker dishonestly withheld information from his employer, made a dishonest claim to his regulatory body, and repeatedly breached data protection and confidentiality requirements which resulted in a criminal conviction. The social worker's course of conduct significantly breached the high standards expected of a registered social worker.
66. The panel recognised that demonstrating remediation, in a case involving what appears to be a deep seated attitudinal failing, can be difficult. It is particularly difficult when the social worker does not attend the hearing. Although the panel noted that the social worker admitted the data protection breaches during the criminal proceedings, as he has not participated in these proceedings, there was little evidence before the panel that he fully appreciates the gravity of his criminal convictions and his repeated dishonesty. Nor is there any evidence before the panel that he appreciates the impact his behaviour has had on the children, their families, his former employer, the local authorities, his professional standing and the wider profession as a whole. There has been no apology, no explanation as to how the social worker would behave in the future and no assurance that he has taken appropriate steps to reduce the risk of repetition. On the contrary, in the statements the social worker attached to his emails to Social Work England dated 1 May 2020 and 25 September 2020 he chose to focus on himself and the impact on his family. In the May 2020 email he stated:

"My "lack of engagement" is based on a few factors. Such as the embarrassment and shame I have placed on my family, the emotional and stress of being in court and named and shamed in the press, which I take full responsibility for, something I have never run away from. Yet there appears that this has not been enough, and more "punishment" is deemed necessary. This now leaves me in a place where I now find myself exhausted...and rebuilding my life and my reputation is my only concern.

I would respectfully ask that Social Work England leave me alone (sic)."

In the September 2020 email he stated:

"...as stated on numerous occasions and under oath in a court of law in January of this year...I have not practised as a Social Worker since 2016. I can only assume that this current hearing resembles nothing more than a bureaucratic process that Social Work England are required to adhere to."

67. The content of the social worker's recent correspondence strongly indicates that he has limited insight and has no respect or understanding of the purpose of professional

regulation. In the absence of any meaningful insight and steps taken towards remediation, the panel concluded that there is a real risk of repetition. The panel was particularly concerned that the social worker appears to have learnt nothing from the previous disciplinary findings made against him by the HCPC in 2018.

68. The panel took the view that the factual findings, misconduct and criminal conviction raise serious public safety concerns. The social worker repeatedly and for a significant period of time put his own personal interests above the interests of vulnerable service users, his employer and his professional obligations. Although there was no evidence of actual harm, his acts and omissions had the potential to cause serious harm to vulnerable children and their families by passing on confidential and highly sensitive information about them to a third party. In addition, his actions could have had the effect of undermining the trust and confidence of those service users involved in the social work profession as a whole. His acts and omissions also had the potential to cause reputational damage to his employer and undermined the authority of his regulatory body. The social worker has demonstrated only limited insight and in the absence of any evidence of remediation the panel took the view that there is a current and ongoing risk of harm to service users. The panel assessed the risk as high given the repeated nature of his misconduct and his dismissive attitude towards his regulatory body. In reaching this conclusion the panel noted that, within a period of approximately four years, the social worker has appeared before his regulatory body on two separate occasions involving proven allegations of a serious nature and has been convicted of a criminal offence.
69. In these circumstances, the panel concluded that the social worker has demonstrated a persistent attitudinal failing and as a consequence his ability to practise safely and effectively is currently impaired.
70. In considering the wider public interest the panel had regard to the need to promote and maintain public confidence in the profession and to promote and maintain proper standards of conduct and behaviour.
71. The panel was satisfied that the social worker's conduct and behaviour represented a significant departure from the high standards of personal and professional behaviour expected of registered social workers. The social worker's conduct fell far below the standards expected of a registered social worker. His behaviour put service users at risk of harm, breached fundamental tenets of the profession which include honesty and trustworthiness, brought the profession into disrepute and were dishonest. The panel was mindful of the duty to uphold proper standards of conduct and behaviour and concluded that a finding of impairment was required to publicly declare that it is wholly unacceptable for a social worker to dishonestly pass on confidential information to a third party. In so doing, he committed a criminal offence, dishonestly withheld information from his employer and made a false claim to his regulatory body.

72. The panel also concluded that a reasonable and well-informed member of the public would be extremely concerned by the social worker's misconduct and conviction. The panel took the view that public trust and confidence in the profession and in Social Work England would be significantly undermined if a finding of impairment of fitness to practise was not made, given the nature and seriousness of the social worker's conduct and behaviour.
73. Therefore, the panel concluded that the social worker's current fitness to practise is also impaired based on the wider public interest.

Decision and reasons on sanction:

The Panel's Approach

74. The panel considered the submissions made by Ms Pitters, on behalf of Social Work England. She outlined relevant aggravating and mitigating factors and invited the panel to impose a Removal Order to protect the public and the wider public interest.
75. The panel accepted the advice of the legal adviser and took into account the Sanctions Guidance published by Social Work England.
76. The panel was mindful that the purpose of any sanction is not to punish the social worker, but to protect the public and the wider public interest. The public interest includes promoting and maintaining public confidence in the profession and Social Work England as its regulator and promoting and maintaining proper standards of conduct and behaviour.
77. The panel applied the principle of proportionality by weighing the social worker's interests with the public interest and by considering each available sanction in ascending order of severity.
78. The panel, at the outset of its deliberations, considered the aggravating and mitigating factors.
79. The panel identified the following aggravating factors:
- the social worker's dishonesty represents an ongoing risk of significant harm to vulnerable children and their families (who may be less likely or less willing to engage with social workers as a consequence of the unauthorised disclosure of confidential information to a third party), the local authorities, his former employer, and his regulatory body;
 - the data protection breaches, and confidential information forwarded to a third party were highly sensitive;

- he has previously been made subject to a 12 month suspension order by the HCPC in 2018 for exploiting his position of trust with a vulnerable service user;
- he has limited insight and has demonstrated a deep seated attitudinal failing; in particular he has provided no evidence that he recognises the impact of his conduct on others;

80. The mitigating factors the panel identified were as follows:

- the social worker made broad admissions in his written statements to Social Work England (May 2020 and September 2020);
- he pleaded guilty to the data protection breaches during the criminal proceedings;
- there is no evidence of actual harm caused to service users.

No Further Action

81. The panel first considered taking no further action. The panel concluded that, in view of the nature and seriousness of the social worker's misconduct and convictions which have not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action on his registration. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

82. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict the social worker's ability to practise and is therefore not appropriate where, as in this case, there is a current risk to public safety. The social worker's conduct had, and continues to have, the potential to cause significant harm to vulnerable children, their families, the local authorities, his former employer, and his regulatory body. The risk is ongoing as the third party's use of the highly sensitive information is unknown. As a consequence, some form of restriction on the social worker's practise is required. Therefore, the panel concluded that issuing advice or a warning would be inappropriate and insufficient to protect the public and the wider public interest.

Conditions of Practice Order

83. The panel went on to consider a Conditions of Practice Order. The panel noted that it would be unusual to address multiple findings of dishonesty by imposing a Conditions of Practice Order as such conduct is based on an attitudinal failing. The social worker's dishonesty was pervasive; it was repeated on numerous occasions, adversely impacted a wide range of individuals and organisations, and persisted for a significant

period of time. The panel took the view that it would not be possible to formulate measurable and workable conditions to address the social worker's dishonesty. Furthermore, although in theory the social worker's dishonesty is capable of being remedied, such remediation requires an acknowledgment of fault, deep and meaningful reflection, and a commitment to ensuring that the dishonesty and underlying conduct will not be repeated. There was no evidence before the panel that the social worker is willing or able to take active steps to remediate his misconduct. On the contrary, the social worker has made it clear that he does not intend to return to practice and therefore there is no incentive for him to demonstrate remediation. In these circumstances, the panel had no confidence that the social worker would comply with a Conditions of Practice Order, even if suitable conditions could be formulated. Therefore, the panel concluded that conditions would not be appropriate or workable.

Suspension Order

84. The panel, having determined that a Conditions of Practice Order would not be appropriate went on to consider whether to impose a Suspension Order.
85. The panel noted that a Suspension Order would reaffirm to the social worker, the profession, and the public the standards expected of a registered social worker. It would also prevent the social worker from practising during the suspension period, which would therefore provide temporary protection to the public and the wider public interest. However, an issue then arises as to what assurance would there be that when the suspension period came to an end, the risk to the public would be sufficiently reduced. The panel took the view that that would depend, on the extent to which the conduct is remediable. There can be no public interest in maintaining a social worker on the Register and subjecting him to review hearings if there is no realistic prospect of a return to practise.
86. The panel noted that repeated dishonesty is inherently difficult to remediate. It is even more difficult when, as in this case, the social worker has not demonstrated any willingness or ability to remediate his conduct. The social worker's misconduct involved a gross breach of his employer's trust and a reckless disregard for the interests of vulnerable service users, local authorities, and his regulatory body. Furthermore, the panel took the view that the public would consider the social worker's repeated dishonest breaches of data protection and confidentiality as a betrayal of the trust and confidence afforded to registered social workers which would need to be marked by the most severe sanction. The panel was particularly concerned that there is no evidence that the social worker has learnt any lessons from the HCPC disciplinary proceedings in 2018. The social worker forwarded sensitive

service user information to a third party whilst he was subject to the HCPC disciplinary proceedings and this panel has found that he continued to work as a social worker after the HCPC imposed a 12 suspension order in April 2018.

87. The panel concluded that the social worker's persistent lack of insight, his failure to respond appropriately to the HCPC's findings in 2018, his disregard of the previously imposed suspension order and his stated desire to be removed from the Register are fundamentally incompatible with continued registration. In these circumstances, the panel concluded that any sanction short of a Removal Order would fail to promote and maintain proper standards of conduct and would fail to promote and maintain public confidence in the profession and Social Work England as the regulator. In reaching this conclusion the panel took into account the social worker's non-engagement during the hearing and noted the observation of Mitting J, in NMC v Parkinson [2010] EWHC 1898 where he stated:

"A [practitioner] found to have acted dishonestly is always going to be at severe risk of having his or her name [removed] from the register. A [practitioner] who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct [a Removal Order]."

88. The social worker has not provided the panel with any basis for adopting *"a lenient or merciful outcome"*. On the contrary, he has indicated that a Removal Order would be in his own interests.

Removal Order

89. The panel noted that a Removal Order is a sanction of last resort where there is no other means of protecting the public or the wider public interest.
90. The panel determined that a Removal Order should be imposed. In reaching this conclusion the panel took into account paragraphs 97 of the SG which states:

"A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England."

91. The social worker has not practised as a social worker since May 2018 and has no intention of returning to practise. In these circumstances, together with the reasons

outlined above, the panel took the view that there was no realistic prospect of a return to safe and effective practice. Therefore, the panel concluded that no sanction lower than a Removal Order would be sufficient to protect the public and the wider public interest.

92. Accordingly, the panel determined that a Removal Order is the appropriate, necessary, and proportionate sanction in this case.

Interim Order

93. Ms Pitters, on behalf of Social Work England, made an application for an Interim Suspension Order to cover the appeal period on the grounds that it is necessary to protect the public.

Decision

94. The panel accepted the advice of the legal adviser.
95. The panel determined that an interim order was necessary for the protection of the public because of the nature and seriousness of the findings made against the social worker. Members of the public would be extremely concerned if he was able to continue to practise during the appeal period, in circumstances where his acts and omissions exposed vulnerable children, local authorities, his employer and his regulatory body to a significant risk of harm. Furthermore, it would be perverse and inconsistent with the panel's determination that there is an ongoing risk of repetition which justifies removal from the Register. The panel concluded that Conditions of Practice would be inappropriate and unworkable for the same reasons that conditions were not imposed as a substantive order. Therefore, the Panel determined that an Interim Suspension Order should be imposed on the social worker's registration.
96. In reaching this decision the panel considered the impact an Interim Suspension Order may have on the social worker. However, the panel took the view that he was unlikely to have any opposing interests given his desire to be removed from the Register, albeit on a voluntary basis, and concluded that an Interim Suspension Order is proportionate.
97. The panel decided that the Interim Suspension Order should be imposed for 18 months, to cover the 28-day appeal period and the time it may take for any appeal, if made, to be determined.

Right of Appeal:

98. Under paragraph 16 (1) (b) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social Worker may appeal to the High Court against:

- a. 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,
 - iv. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
- b. Under regulation 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.

99. 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.

Review of final orders

100. Under regulation 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.
101. 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.