

Social Worker:
Paul Bernard Tattersall
Registration Number: SW36410
Fitness to practise: Final hearing

Dates of hearing: 14 January 2021 – 15 January 2021, Resumed on 22 June 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 ('the Regulations').
2. Mr Paul Bernard Tattersall did not attend and was not represented.
3. Social Work England was represented by Ms Sophie Sharpe, instructed by Capsticks LLP.

Adjudicators	Role
Debbie Hill	Chair
Susan Williams	Social Worker Adjudicator
Melissa D'Mello	Lay Adjudicator

Jyoti Chand	Hearings Officer
Robbie Morgan	Hearing Support Officer
Rachel Birks	Legal Adviser

Service of Notice:

4. Mr Tattersall did not attend and was not represented. The panel of adjudicators ('the panel') was informed by Ms Sharpe that notice of this hearing was sent to Mr Tattersall by special delivery and first class post to his address on Social Work Register ('the Register'). Ms Sharpe submitted that the notice of this hearing had been duly served.
5. The panel of adjudicators ('the panel') had careful regard to the submissions of Ms Sharpe in relation to service of the notice of hearing and the documents contained in the final hearing service bundle as follows:
 - a. A copy of the notice of final hearing dated 11 December 2020 and addressed to Mr Tattersall at his address as it appears on the Register;
 - b. An extract from the Register detailing Mr Tattersall's registered address;
 - c. A copy of a signed statement of service, on behalf of Social Work England, confirming that on 22 December 2020 the writer instructed Docucentre to send

the notice of hearing, statement of case and a hearing timetable by ordinary first class post and special delivery to Mr Tattersall at his registered address;

- d. A copy of the Royal Mail track and trace document indicating 'delivered and signed' and 'Signed for by: TATTERAALL' at Mr Tattersall's registered address at 09:37am on 12 December 2020.
6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. Having had regard to Rules 14, 15 and 44 of the Social Work England Fitness to Practise Rules ('the Rules') 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 Mr Tattersall in accordance with the Rules.

Proceeding in the absence of the social worker:

8. Ms Sharpe invited the panel to proceed in the absence of Mr Tattersall. She submitted that the hearing should proceed today out of fairness to the social work profession, Social Work England, the witnesses who were ready to give evidence and the public. She further submitted that the panel should have regard to its primary objective of protection of the public and that this case involved serious allegations where there would be a public expectation that they would be resolved as expeditiously as possible.
9. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering whether to proceed in the absence of Mr Tattersall. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2003] UKPC*; *General Medical Council v Adeogba [2016] EWCA Civ 162*.
10. The panel considered all of the information before it, including that notice of the hearing has been properly served by Social Work England. The panel noted Mr Tattersall's email to Social Work England dated 12 March 2020 when he stated that he would not be engaging further with Social Work England, and Ms Sharpe's submission that there had been no further contact from him since that date. The panel concluded that Mr Tattersall had voluntarily chosen to absent himself. The panel had no reason to believe that an adjournment until a future date would result in Mr Tattersall's attendance. The panel gave significant weight to the public interest in an expeditious disposal of this hearing, and determined that it was appropriate to proceed in Mr Tattersall's absence.

Allegation(s)

11.

'Whilst employed as a Social Worker for Bury Metropolitan Council and registered with the Health and Care Professions Council:

1. You did not maintain a professional relationship with Person A by:
 - a. Sending text messages which breached professional boundaries to Person A, between on or around November 2018 to February 2019;

- b. Engaging in sexual activity with Person A between on or around November 2018 and January 2019.
- 2. Your conduct in paragraph 1 was sexually motivated.
- 3. The matters set out in paragraphs 1 and 2 constitute misconduct.
- 4. By reason of your misconduct your fitness to practice is impaired.'

Preliminary matters:

Application to adduce further evidence:

- 12. Ms Sharpe invited the panel to receive two further documents which had been sent to Social Work England in September 2019 and which related to Mr Tattersall's request that this hearing should be held in private. These were letters that Mr Tattersall's GP and wife had sent with Mr Tattersall's knowledge.
- 13. The panel received legal advice that it can receive any evidence where it would be fair to do so, and that as the two documents were directly relevant to the request from Mr Tattersall that the hearing be held in private it would be fair to receive them, and indeed Mr Tattersall might have an expectation that the panel would see them.
- 14. The panel determined that it was fair for it to receive the two further documents, namely:
 - a. a letter from Mr Tattersall's GP dated 23 September 2019;
 - b. a letter from Mr Tattersall's wife dated 24 September 2019.

Application to proceed in private:

- 15. Ms Sharpe drew the panel's attention to the fact that Mr Tattersall had previously requested that Social Work England:
 - a. holds a private rather than public hearing; and
 - b. does not publish the outcome of the hearing.
- 16. Ms Sharpe submitted that Social Work England's position was that the hearing should be held in public, because of the clear public interest in hearings and outcomes being available to the public. She referred to the case of *General Medical Council v X* [2019] EWHC 493 (Admin) where the High Court had determined that there should no publication of a determination which identified Dr X because of the real and immediate risk to his life if that happened. She distinguished it from Mr Tattersall's case on the following grounds:

- a. Mr Tattersall 's evidence was in the form of letters from his GP and wife sent some 16 months ago, unlike the very current psychiatric evidence in *General Medical Council v X*;
 - b. The letter from Mr Tattersall's GP makes reference to stress and somatic stress symptoms but provides no further detail. There is no evidence of a mental health diagnosis or treatment being provided;
 - c. The case of *General Medical Council v X* involved the legal test of a real and immediate risk of suicide with objective and recent evidence of four of the five risk factors for suicide present, which is very different to the evidence before the panel today.
17. The panel heard and accepted advice from the legal adviser that the starting point is that all hearings should be held in public, but that Rule 38 provides for circumstances where a hearing shall or can be heard in private as follows:
- '38.
- (a) A hearing, or part of a hearing, shall be held in private where the proceedings are considering:*
- (i) whether to make or review an interim order; or*
 - (ii) the physical or mental health of the registered social worker.*
- (b) The regulator, or adjudicators as the case may be, may determine to hold part or all of the proceedings in private where they consider that to do so would be appropriate having regard to:*
- (i) the vulnerability, interests or welfare of any participant in the proceedings;*
or
 - (ii) the public interest including in the effective pursuit of the regulator's over-arching objective.*
 - (iii) ...*
 - (iv)...'*
18. The legal adviser advised the panel to take into account the judgement in the case of *General Medical Council v X* which makes clear that the Article 2 Right to Life is a very real consideration where the health of a registrant may be impacted by the way in which a regulator approaches its role, but it was for the panel to determine whether it would be appropriate to proceed as a private hearing in all of the circumstances of this case.

19. The panel noted that there is no recent evidence about the impact of these proceedings on Mr Tattersall's health. There is no independent, objective medical evidence which suggests a real and immediate risk to life in respect of either Mr Tattersall or his wife if this hearing proceeds in public with a public determination at its conclusion. The quality of the evidence relied upon by Mr Tattersall for a private hearing is very different to the evidence presented and heard by the panel in the *General Medical Council v X case*.

20. Holding public hearings and the publication of fitness to practise decisions provides transparency and valuable information about the standards expected within the social work profession. There is a public interest in sharing this information because it assists Social Work England in its role to protect the public by :

- a. promoting understanding and good practice within the sector helping to uphold standards;
- b. maintaining confidence in the social work profession;
- c. assisting members of the public to make informed choices;
- d. reassuring the public and profession that there is a robust system of regulation.

21. The panel determined that the hearing should be held in public and that there should be a public record of the determination at the conclusion of the hearing, with the caveat that any matters pertaining to health matters should be dealt with in private.

Application to amend:

22. Ms Sharpe made an application to amend the allegation by adding 'and 2' into allegation 3 as follows:

'The matters set out in paragraphs 1 *and* 2 constitute misconduct'.

23. Ms Sharpe submitted that the amendment did not change the seriousness or the nature of the allegation, rather it was to provide clarity. She further submitted that Mr Tattersall was on notice of the proposed amendment.
24. The panel accepted the advice of the legal adviser that it could allow such an amendment if it did not change the seriousness or nature of the allegation. It concluded that it did not and determined to allow the amendment.

Summary of Evidence

25. The panel reminded itself that the burden is on Social Work England to prove the facts and that the standard of proof is the civil standards, namely on the balance of probabilities.
26. The panel heard received witness statements from, and heard oral evidence from the following witnesses on behalf of Social Work England:
 - a. Mr Bart Popelier, Strategic Lead for Safeguarding at Bury Council ('Bury Council') at the time of the allegations;
 - b. Ms Tracey Stopford, Safeguarding Team Manager at Bolton Council ('Bolton Council') at the time of the allegations.
27. Mr Tattersall was not in attendance and did not present any written statements although the panel received:
 - a. A file note of a telephone call with Mr Tattersall on 27 March 2019;
 - b. An email from Mr Tattersall dated 3 April 2019;
 - c. An email from Mr Tattersall admitting misconduct dated 8 September 2019;
 - d. A response from Mr Tattersall dated 29 September 2019;
 - e. An email from Mr Tattersall dated 12 March 2020.
28. Ms Stopford gave evidence as to the investigation by both Bolton Council and the police following the initial disclosure by Person A of a sexual activity between her and Mr Tattersall, including the details of an interview conducted with Person A on 6 February 2019 by Ms Stopford and a police officer. Person A made the disclosure to her senior practitioner at a drug and alcohol rehabilitation Centre in February 2019, who in turn reported the same to the Local Authority Designated Officer for Bolton Council. The allegations concerned a sexual relationship between Mr Tattersall and Person A which was alleged to have taken place between November 2018 and January 2019, whilst Mr Tattersall was employed as a locum social worker for Bury Council. At

the time of the relationship, Mr Tattersall was the allocated social worker to Person A's child, Child 1.

29. Mr Popelier confirmed that Person A was considered by Bury Council to be vulnerable, suffering from mental health issues and alcohol dependency.
30. Ms Stopford confirmed that Person A alleged in her disclosure that sexual intercourse had taken place on four or five occasions between about November 2018 and January 2019. Person A provided her mobile telephone to police, who subsequently obtained screenshots of messages that she said were exchanged between Mr Tattersall and her.
31. Mr Popelier met with Mr Tattersall on 6 and 7 February 2019 to discuss the allegations that they had received. Mr Tattersall initially denied that he had sexual intercourse with Person A and suggested that perhaps Person A was fantasizing. However, after being informed that Bury Council was aware of text messages of a sexual nature between them, Mr Tattersall admitted that there was a relationship with Person A. He told Bury Council that:
 - a. he did not think he had done anything wrong;
 - b. his actions had not affected the case; and
 - c. the case had subsequently been reallocated to another social worker.
32. The panel found Mr Popelier to be entirely credible and reliable in his evidence. He dealt with the investigation in a professional and thorough manner and his evidence before the panel was concise and yet detailed in relation to the important facts for the panel. His answers were considered and he was clear to the panel when he could not recall something. He only knew Mr Tattersall in a professional capacity and the panel noted that he was very fair and balanced to Mr Tattersall in his evidence commenting that but for these allegations he respected him as a social worker.
33. The panel concluded that Mr Popelier's written notes from his meetings with Mr Tattersall on 6 and 7 February 2019 were a reliable and accurate record of what was said in those meetings, and of the admissions made by Mr Tattersall. Mr Popelier had asked for an independent and senior member of staff to attend the meeting on 6 February 2019 to take notes. He himself kept handwritten notes from the meeting on 7 February 2019. Both sets of notes were typed up within two weeks of the meetings and copies of these and a summary of the Health and Care Professions Council ('HCPC') referral were sent to Mr Tattersall.
34. Likewise, Ms Stopford was professional in her approach to both the investigation of the information and her evidence before the panel. She did not work for Bury Council

and had no involvement in the social services support provided to Person A. The panel considered her to be a credible and reliable witness.

35. The panel concluded that Ms Stopford's notes of the meeting with Person A on 6 February 2019 were an accurate and reliable account of what Person A said in that meeting by Person A. They were typed up the same day by Ms Stopford.

36. The panel accepted the advice of the legal adviser that it can rely upon the hearsay evidence of Person A but that it will need to consider it carefully and in determining what weight to attach to it, the panel should take into account:

- a. The source of the information
- b. The way in which the information has been obtained, clarified and recorded
- c. The extent to which it is consistent with other evidence or admissions.

37. The panel concluded that it could give weight to Person A's hearsay evidence. Her account was obtained by the police and Ms Stopford following her disclosure to a healthcare professional. The Panel noted Ms Stopford's evidence that "*Person A came across as a very genuine lady and she was not looking to press charges but she just wanted her son back*". Her account was recorded and is substantiated by the text messages obtained by the police from her phone. The panel noted that the majority of her account is not disputed by Mr Tattersall save for:

- a. Mr Tattersall states that the relationship with Person A began on 27 December 2018 and not in November 2018 as alleged by Person A;
- b. Mr Tattersall states that whilst he may have asked Person A to delete his messages from her phone, he did not insist on this as alleged by Person A.

38. The panel accepted the hearsay evidence of Person A that:

- a. Mr Tattersall engaged in "wellbeing sessions" with her from the early stages of his work with her, and at times would put a penny on her head describing this as a "lucky penny" that he would kiss to make her wishes come true. Person A would play along as Mr Tattersall said that he would help get her son back from being in local authority care.

- b. she thought that entering into a sexual relationship with Mr Tattersall would enable her to keep her child;
- c. Mr Tattersall had insisted from early in the relationship, that she should delete his messages from her phone, and watched her do so.

39. The panel gave weight to:

- a. Ms Stopford's evidence that Person A was affected by the situation and was trying to get clean and dry but was being lied to. Her expectation of getting her son back was getting higher and higher.
- b. Mr Popelier's evidence that:
 - i. Person A had been let down by and her trust in social workers had diminished.
 - ii. The court proceedings were delayed as Child 1's case had to be reassessed as a result of Mr Tattersall's relationship with Person A, the mother of Child 1.
 - iii. Mr Tattersall had told him that he intended to continue the relationship with Person A.

Finding and reasons on facts

40.

1. You did not maintain a professional relationship with Person A by:

- a. Sending text messages which breached professional boundaries to Person A, between on or around November 2018 to February 2019; **Found proved**

On the balance of probabilities the panel concluded that the text messages in the bundle were text messages sent by Mr Tattersall to Person A between on or around November 2018 and February 2019. They were taken from Person A's phone by the police and are not professional in nature as is evidenced by the following extracts:

- 'I also know the other stuff you may or may not remember telling me that's not in the files and will never go in the files. I'm ...dreaming about being with you'
- 'Im giving up my job. I will be on your side next time you're in court.'
- '...you are the most amazing sexy beautiful woman on the planet.'
- 'Ive been trying to look up 123 sex. Cant find anything but porn sites so i still don't know what it is. I have to be enlightened by you next time xxxxxx'
- 'You can carry on doing whatever you enjoyed in there with me afterwards. Plus bonus lots and lots of sex'
- 'Hopefully with me by your side not abusing of taking advantage of your vulnerabilities but as your true partner who completely respect you xxxxxx'
- 'Im being asked to apply for Sue's manager job I wont do dont worry. Anyway i will soon be thought of as worse that shit under their shoe when they find out im with you. Not to worry coz i dont care what they think.'

41. The panel also accepted Person A's account, as relayed by Ms Stopford, that sexual relations with Mr Tattersall took place at her home within working hours.

42. The panel therefore found paragraph 1(a) proved.

43.

1(b). Engaging in sexual activity with Person A between on or around November 2018 and January 2019. **Found proved**

The panel accepted the hearsay evidence of Person A that sexual relationship had taken place with Mr Tattersall, where sexual activity had taken place on a number of occasions. This is admitted by Mr Tattersall and is supported by the text message content. The panel concluded that it was not necessary to determine exactly when the relationship commenced as the allegation was drafted broadly and it makes no material difference to the panel's conclusions that Mr Tattersall's actions were not professional, whether the sexual activity commenced in November or December 2018.

The panel therefore found paragraph 1(b) proved.

44.

2. Your conduct in paragraph 1 was sexually motivated. **Found proved**

The panel reminded itself of the legal advice that a sexual motive means that:

- a. the conduct was done either in pursuit of sexual gratification, or
- b. in pursuit of a future sexual relationship (*Basson v General Medical Council [2018] EWHC 505 (Admin)*)

45. The panel also reminded itself of the legal advice that it should consider whether there was any other plausible action explanation for Mr Tattersall's actions (*Haris v GMC [2020] EWHC 2518*)

46. The panel concluded that there was no explanation for Mr Tattersall's text messages other than that they were in pursuit of a sexual relationship, or the continuation of a sexual relationship with Person A. The panel concluded that the only explanation for the pursuit of a sexual relationship with Person A was that it was for sexual gratification.

47. The panel therefore found paragraph 2 proved in respect of both 1(a) and 1(b).

Finding and reasons on grounds

48. Ms Sharpe submitted on behalf of Social Work England that the facts found proved amounted to a serious abuse of trust by Mr Tattersall. She highlighted the following features of the case that make it so serious:

- a. Mr Tattersall was in a position of power over Person A;
- b. Person A believed that by entering into a sexual relationship with Mr Tattersall she might be able to keep her child;
- c. Person A was vulnerable, and on Mr Tattersall's own account he had embarked on a sexual relationship with her on a day when she was suicidal and had relapsed into alcohol use;
- d. Mr Tattersall was not open about the fact of the relationship, only admitted it when he learnt that the police had obtained text messages he had sent to Person A and sought to conceal it by getting Person A to delete messages from him from her phone;
- e. Mr Tattersall was trusted to give objective evidence about Person A's suitability to care for Child 1, and his text messages suggested that to the

contrary he had promised to keep information that she had told him to himself.

49. The panel reminded itself that there is no burden or standard of proof at this stage of the hearing. The panel is to apply its own judgement in relation to whether the facts found proved amount to misconduct.

50. The panel accepted the advice of the legal adviser that misconduct was stated to be conduct that has:

- f. "fallen short, by omission or commission, of the standards of conduct expected among dentists, and that such falling short as is established should be serious." (*Doughty v General Dental Council* [1988] AC 164);
- g. "a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances." (*Roylance v General Medical Council (No 2)* [2000] 1 AC 311);
- h. "conduct which would be regarded as deplorable by fellow practitioners." *Nandi v General Medical Council* [2004] EWHC 2317;

51. The panel concluded that any sexual relationship with the mother of a service user who was being assessed in relation to her suitability to care for her child would be serious. The particular features of this case as set in Ms Sharpe's submissions make Mr Tattersall's actions particularly serious.

52. The panel found Mr Tattersall to be in breach of the following paragraphs of HCPC's Standards of Conduct, Ethics and Performance:

- a. '1.7 You must keep your relationships with service users and carers professional;
- b. 6.2 You must not do anything, or allow someone else to do anything, which could put the health or safety of a service user, carer or colleague at unacceptable risk;
- c. 9.1 You must make sure that your conduct justifies the public's trust and confidence in you and your profession.'

53. The panel concluded that members of the profession and the public would consider Mr Tattersall's actions to be deplorable and a serious falling short of the standards

expected from social workers. These actions have the potential to damage trust in the profession and they put Child 1 and Person A at risk of harm.

54. The panel found that this was serious misconduct.

Finding and reasons on current impairment

55. Ms Sharpe submitted on behalf of Social Work England that such misconduct is difficult to remediate and there is no evidence of any remediation, or expressed intent by Tattersall to engage in remediation. Ms Sharpe submitted that an acknowledged on his part that he has acted poorly is not sufficient.

56. Ms Sharpe submitted that in the absence of any remediation the risk of repetition is high and that a finding of impairment is needed in order to uphold the over-arching objective of protecting the public which involves the pursuit of the following objectives:

- a. to protect, promote and maintain the health, safety and well-being of the public;
- b. to promote and maintain public confidence in the profession; and
- c. to promote and maintain proper professional standards of conduct for members of the profession.

57. The panel accepted the advice of the legal adviser that there is no burden or standard of proof when it comes to the issue of impairment. It is a matter for the panel. The legal adviser also advised that in relation to impairment remember that it is current impairment of fitness to practise that is important and that the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, provides a helpful approach to the determination of impairment because it involves a consideration of both the past and the future:

‘Do our findings of fact in respect of the doctor’s misconduct...show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical 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 medical profession; and/or...

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

58. The legal adviser also advised the panel to have regard to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* which states:

'It must be highly relevant in determining if a doctor's fitness to practise is impaired that; first his or her conduct which led to the charge is easily remedied, second that it has been remedied and third that it is highly unlikely to be repeated.'

59. The panel noted that there was nothing from Mr Tattersall to show any genuine reflection on the impact of his actions on Person A or Child 1. When challenged by Mr Popelier, Mr Tattersall indicated an intention to continue the relationship with Person A. His remorse appears to be in relation to the impact of his actions upon himself and his wife, rather than on Person A, Child 1 and the social work profession. The panel concluded that there was no evidence of remediation and therefore there remained a high risk of a repetition of the misconduct.

60. The panel had regard to the approach in *Grant v GMC* and concluded that:

- a. Mr Tattersall has in the past acted and is liable in the future to act so as to put a service user and carer at unwarranted risk of harm; and
- b. Mr Tattersall has in the past brought and is liable in the future to bring the social work profession into disrepute; and
- c. Mr Tattersall has in the past breached and is liable in the future to breach one of the fundamental tenets of the social work profession, which is to act in such a way as to justify the public's trust and confidence in him and the profession;

61. The panel therefore concluded that Mr Tattersall's fitness to practise is impaired by reason of his misconduct, and that such a finding is necessary in order to uphold the overarching objective.

Service of Notice:

62. The panel reconvened to hear submission on sanction and conclude Mr Tattersall's hearing on 22 June 2021. Mr Tattersall did not attend and was not represented. The panel was informed by Ms Sharpe that notice of this hearing was sent to Mr Tattersall by first class post on 23 February 2021 to his address on the Register. This was confirmed by a statement of service. Ms Sharpe submitted that the notice of this hearing had been duly served.

63. The panel had careful regard to the submissions of Ms Sharpe in relation to service of the notice of hearing and the documents contained in the final hearing service bundle as follows:

- a. A copy of the notice of hearing dated 23 February 2021 and addressed to Mr Tattersall at his address as it appears on the Register;
- b. An extract from the Register detailing Mr Tattersall's registered address;
- c. A copy of a signed statement of service, on behalf of Social Work England, confirming that on 23 February 2021 the writer sent a notice of final hearing letter by ordinary first class post to Mr Tattersall at his registered address.

64. The panel accepted the advice of the legal adviser in relation to service of notice.

65. Having had regard to Rules 14, 15 and 44 of the Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this reconvened hearing had been served on Mr Tattersall in accordance with the Rules.

Proceeding in the absence of the social worker:

66. Ms Sharpe invited the panel to proceed in the absence of Mr Tattersall. She submitted that these were serious, now proven allegations against Mr Tattersall and that the public interest required an expeditious conclusion to the hearing. She reminded the panel that Mr Tattersall has been sent a copy of the determinations made by the panel earlier in this hearing and he has been made aware of the reconvened date. She further submitted Mr Tattersall previously had been clear that he does not wish to engage with the hearing and his absence was a voluntary waiver of his right to attend. She submitted that there was no request before the panel for an adjournment and no evidence that an adjournment would secure Mr Tattersall's attendance. Ms Sharpe submitted that it was fair for the panel to proceed today.

67. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering whether to proceed in the absence of Mr Tattersall. This included reference to Rule 43 of the Rules and the cases of *Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34*, *R v Jones [2003] AC 1 HL* and *General Medical Council v Adeogba [2016] EWCA Civ 162*.

68. The panel concluded that Mr Tattersall had voluntarily chosen to absent himself from this reconvened hearing. The panel had no reason to believe that an adjournment until a future date would result in Mr Tattersall's attendance. The panel gave significant weight to the public interest in an expeditious disposal of this hearing which has already been delayed in reaching a conclusion and determined that it was appropriate to proceed in Mr Tattersall's absence.

Decision on sanction

69. In accordance with Regulation 13 (1) of Schedule 2 of the Regulations, a final order may:

- '(a) require the removal of the social worker's entry from the register (a "removal order"),*
- (b) suspend the social worker from practising for such period as is specified in the order (a "suspension order"),*
- (c) impose a restriction or condition with which the social worker must comply for such period as is specified in the order (a "conditions of practice order"),*
- (d) give a warning to the social worker regarding their future conduct or performance (a "warning order").'*

70. Ms Sharpe submitted that the panel has found proved serious allegations involving sexual activity with a service user, which amounted to an abuse of trust. Ms Sharpe submitted that, in this case, over and above the inherent power imbalance between a social worker and service user, Mr Tattersall had taken advantage of Person A's particular vulnerabilities including mental health and substance misuse. She submitted that social workers hold a privileged position and deal with individuals who are highly vulnerable, and it is therefore essential that they can be trusted.

71. Ms Sharpe referred to paragraphs 102, 103 and 105 of the Sanctions Guidance during her submissions:

"102. Social workers hold privileged positions of trust. Their role often requires them to engage with people over extended periods when those people may be highly vulnerable. It is essential to the effective delivery of social work that the public can trust social workers implicitly. Any abuse of trust by a social worker is a serious and unacceptable risk in terms of public protection and confidence in the profession as a whole.

103. Decision makers must assess each case on its merits and must apply proportionality considering any mitigating or aggravating factors present. However, most cases of serious abuses of trust are likely to require suspension or removal of registration. Decision makers should provide detailed reasoning to explain lesser sanctions in such cases.

"105. Abuse of professional position to pursue a sexual or improper emotional or social relationship with a service user or a member of their family or a work colleague is a serious abuse of trust. Many people will be accessing social care for reasons that increase their vulnerability and that of their family. Pursuit of a sexual or improper emotional or social relationship with a vulnerable person is likely to require a more serious sanction against a social worker."

72. Ms Sharpe invited the panel to approach the question of sanction in ascending order starting with the least restrictive sanction. She submitted that no further action or a warning would be incompatible with the panel's findings on misconduct and impairment of fitness to practise. She reminded the panel that such outcomes do not restrict a social worker's practice and are not subject to review. She submitted that such

outcomes would not protect the public from the identified high risk of repetition and would not protect the wider public interest.

73. Ms Sharpe reminded the panel of paragraph 84 of the Sanctions Guidance in relation to a conditions of practice order:

'84. Conditions are most commonly applied in cases of lack of competence or ill health. They're less likely to be appropriate in cases of character, attitudinal or behavioural failings, or in cases raising wider public interest issues. For example, conditions would almost certainly be insufficient in cases of sexual misconduct, ... [and] abuses of trust ...'

74. Ms Sharpe submitted that Mr Tattersall has indicated that he does not intend to practise as a social worker again, and therefore there is no evidence of any willingness and/or ability to comply with conditions. She submitted furthermore that Mr Tattersall's failings are so serious that it would not be possible to formulate conditions that would meet the overarching objective.

75. In relation to a suspension order Ms Sharpe submitted that the panel has identified a high risk of repetition. There is no evidence from Mr Tattersall of any genuine reflections, remorse for the impact of his actions on Person A or Child 1 or remediation. She submitted that action needs to be taken which restricts Mr Tattersall's ability to practise as a social worker, for the safety of the public and to maintain confidence in the profession. She reminded the panel of paragraph 96 of the Sanctions Guidance:

'96. Given the risk of deskilling, decision makers should consider whether a case warranting a period of suspension longer than one year on the grounds of public confidence might be more appropriately disposed of by means of a removal order.'

76. Ms Sharpe submitted that given the panel's previous findings this is a case which warrants a removal order.

77. In the five month time period since the original hearing, when the facts and impairment decision were handed down, the panel has received nothing direct from Mr Tattersall to assist it with its decision on sanction. Mr Tattersall's wife has written to Social Work England, purportedly on behalf of Mr Tattersall, asking that he be removed from the Register. It is unclear whether Mr Tattersall is aware of this correspondence, and so the panel approached it with caution, particularly in light of Mr Tattersall's email dated 3 April 2019 in which he asked that no correspondence be sent to his home address as *"letters are opened by other family members and therefore information cannot be kept confidential if sent by post"*.

78. The panel accepted the advice of the legal adviser that any sanction should be proportionate and that whilst sanctions are not intended to be punitive they may have a punitive effect.
79. As with the impairment stage of this hearing the panel had regard to the over-arching objective of protecting the public which involves the pursuit of the following objectives:
- a. to protect, promote and maintain the health, safety and well-being of the public;
 - b. to promote and maintain public confidence in the profession; and
 - c. to promote and maintain proper professional standards of conduct for members of the profession.
80. The panel gave consideration as to whether there are any particular mitigating or aggravating features in this case. The panel identified the following aggravating features:
- a. Mr Popelier confirmed that Person A was considered by Bury Council to be vulnerable, suffering from mental health issues and alcohol dependency. She had felt let down by social workers in the past.
 - b. Mr Tattersall prioritised his own interests over the interests of Child 1, the service user that it was his direct responsibility to protect.
 - c. There was an imbalance of power. Mr Tattersall was in a position of power in relation to Person A and Child 1 and the relationship started on a day when Person A had relapsed into alcohol use and was feeling suicidal.
 - d. Sexual activity occurred during the course of Mr Tattersall's working day at Person A's house.
 - e. Mr Tattersall attempted to cover up his actions by asking Person A to delete messages from him and watching her whilst she did so.
 - f. Mr Tattersall initially denied the relationship and suggested that Person A was fantasising.
 - g. Mr Popelier's evidence was that the court proceedings were delayed as Child 1's case had to be reassessed as a result of Mr Tattersall's relationship with Person A, the mother of Child 1.
 - h. Mr Tattersall did not have a single isolated lapse of judgement, rather he engaged in a sexual relationship with repeated inappropriate interactions over several weeks.

1. Even after Mr Tattersall admitted the relationship to his employers, he showed little insight into why the relationship was wrong and indicated that he intended to pursue it.
 - i. There has been no real insight expressed by Mr Tattersall into the impact of his actions on Person A or Child 1.
81. The panel did not consider there to be any mitigating factors in this case. It noted that there were no former regulatory findings against Mr Tattersall but did not consider that this fact in itself mitigated Mr Tattersall's actions. Mr Tattersall has put stress forward as an explanation for his misconduct but the panel did not consider that stress could mitigate what were serious and calculated actions. The panel noted that Mr Tattersall has expressed remorse for his actions, referring to the “consequences” and “hurt” that he caused to Person A and Child 1. However, there is no real evidence before the panel of any meaningful insight into the seriousness of his actions nor the full impact on Person A, Child 1 or the reputation of the profession.
82. The panel took account of the Sanctions Guidance and worked through the sanctions in order considering the least restrictive first.
83. The panel first of all considered whether to make no order, and concluded that a restrictive order is necessary given the serious findings it has made, the high risk of repetition and the need for public protection, in order to uphold the overarching objective.
84. The panel next went on to consider a warning order and concluded again that a restrictive order is necessary given the serious findings it has made, the high risk of repetition and the need for public protection. A warning would not uphold the overarching objective.
85. The panel next went on to consider a conditions of practice order. It identified that as Mr Tattersall is not engaging with Social Work England at the moment there is no evidence that he would comply with conditions. No workable conditions could therefore be formulated. In any event, the panel concluded that such was the serious abuse of trust in this case, that no conditions could be formulated that were not tantamount to suspension. The panel considered Mr Tattersall's actions to be premeditated and reflective of serious attitudinal issues. The panel noted paragraphs 102, 103 and 105 of the Sanctions Guidance referred to by Ms Sharpe in her submissions and determined that there were so many aggravating features in this case, that any sanction lower than a suspension order would be insufficient.
86. The panel next went on to consider a suspension order. Mr Tattersall has not provided any evidence to the panel of meaningful insight or remediation. Mr Popelier stated in evidence that Mr Tattersall described the start of the relationship with Person A as “...something that couldn't be controlled”. This lack of control over his actions, which is

so fundamentally incompatible with registration as a social worker, indicates that he cannot be trusted to work as a social worker in an objective manner whilst ensuring that service users and the public are safeguarded. The panel concluded that the aggravating factors in this case are so extensive and that Mr Tattersall's actions are so serious and attitudinal in nature, that it would be difficult for him to evidence in the future that he is capable of working unrestricted and in a position of trust. Mr Tattersall has had plenty of time to work on developing his insight and remediation but has chosen not to do so, either before the hearing commenced, or in the five months that have elapsed since the impairment decision.

87. The panel noted paragraph 97 of the Sanctions Guidance:

“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”.

88. The panel considered that Mr Tattersall is a risk to service users and that members of the public would be alarmed if he were to continue with registration as a social worker, given all of the aggravating features of the case. Mr Tattersall's actions fell so far short of the professional standards required that they are fundamentally incompatible with continued registration as a social worker. Allowing Mr Tattersall to work as a social worker in the future would seriously damage confidence in the profession and in the regulator. The panel concluded that only a removal order would meet its overarching objective of protecting the public and the pursuit of the following objectives:

- a. to protect, promote and maintain the health, safety and well-being of the public;
- b. to promote and maintain public confidence in the profession; and
- c. to promote and maintain proper professional standards of conduct for members of the profession.

89. The panel determined to direct a removal order.

Interim order

90. In light of its findings on sanction the panel next considered an application by Ms Sharpe, in accordance with paragraph 11(1)(b) of the Regulations, for an interim suspension order for 18 months. This would cover the appeal period, or the period before any appeal is heard, before the removal order becomes operative. Ms Sharpe submitted that an interim suspension order was necessary for the protection of the public and on wider public interest grounds.

91. The panel accepted the advice of the legal adviser that, as it has made a final order, it may go on without needing to give notice to Mr Tattersall, to impose an interim order. Interim orders can be for suspension or conditions and for a total period of 18 months. The panel may make an interim order where it considers it necessary for the protection of the public or in the best interests of the social worker. Protection of the public can

include wider public interest grounds, although regulatory case law is to the effect that there is a very high threshold for interim restriction on the grounds of wider public interest alone.

92. The panel was mindful of its earlier findings and decided that it would be wholly incompatible with those earlier findings and the imposition of a removal order to conclude that an interim suspension order was not necessary.
93. Accordingly, the panel concluded that an interim suspension order should be imposed for the protection of the public and in order to maintain confidence in the profession and the regulator. It determined that it is appropriate that the interim suspension order be imposed for a period of 18 months to cover the appeal period or the period before any appeal is heard. When the appeal period expires, this interim suspension order will come to an end, unless there has been an application to appeal. If there is no appeal the removal order will take effect when the appeal period expires.

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.