



Social Worker: Mark Meredith
Wogan
Registration Number: SW37868
Fitness to Practise:
Final Hearing

Date(s) of hearing: Monday 17 January – Friday 21 January 2022

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 Wogan did not attend and was not represented.
3. Social Work England was represented by Mr Micklewright, as instructed by Capsticks LLP.

Adjudicators	Role
Alex Coleman	Chair
Stella Elliott	Social Work Adjudicator
Alison Lyon	Lay Adjudicator

Calvin Ngwenya	Hearings Officer
Paul Harris	Hearing Support Officer
Helen Gower	Legal Adviser

Service of Notice:

4. Mr Wogan did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Mr Micklewright that notice of this hearing was sent to Mr Wogan on 16 December by special delivery and by e-mail to his postal and e-mail address on the Social Work Register (the Register). Mr Micklewright submitted that the notice of this hearing had been duly served.
5. The panel of adjudicators (hereafter the panel) had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of substantive order review hearing dated 16 December 2021 and addressed to Mr Wogan at his postal and e-mail address as they appear on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr Wogan’s registered postal and e-mail address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that the writer instructed an agent to send the Final Notice of Hearing and final Hearing Bundles on 16 December 2021 by special next day delivery to Mr Wogan at the address referred to above. The documents were refused and sent back

to the sender on 20 December 2021. The same documents were sent to Mr Wogan by e-mail on 16 December 2021 to the e-mail address held by Social Work England.

- A copy of the Royal Mail Track and Trace Document indicating the item was delivered back to the sender on 20 December 2021.

6. The panel accepted the advice of the legal adviser in relation to service of notice. The requirement for good service is that service has been effected in accordance with the Rules. There is no requirement for Social Work England to prove that Mr Wogan received the Notice of Hearing.
7. Having had regard to 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 Wogan in accordance with Rules 14, 44 and 45 of Social Work England (Fitness to Practise) Rules 2019 (the “Rules”).

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Mr Micklewright on behalf of Social Work England. Mr Micklewright referred the panel to an e-mail from Mr Wogan dated 17 November 2021 in which Mr Wogan confirmed that he had received the documents from Capsticks about the final hearing scheduled for 17-26 January 2022. He states that he “tendered my registration as a Social Worker circa Jan 2019. I request this action be confirmed by Social Work England. I confirm that I will not be attending the FTP final hearing dates or providing witnesses or testimonials”. Mr Wogan further confirmed his non-attendance and his wish to rescind his registration in an e-mail dated 20 January 2021. Mr Micklewright submitted that Mr Wogan has waived his right to attend the hearing and that an adjournment would not secure his attendance. Mr Micklewright invited the panel to proceed with the hearing in Mr Wogan’s absence.
9. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to the cases of *R v Jones [2003] UKPC*; *General Medical Council v Adeogba [2016] EWCA Civ 162 etc*; and Rule 43 of the Rules.
10. The panel considered carefully whether it should exercise its discretion to proceed with the hearing in Mr Wogan’s absence. The panel noted that Mr Wogan has confirmed that he received the documents and is aware that the final hearing is scheduled to take place starting on 17 January 2022. On more than one occasion Mr Wogan has expressed a clear and settled intention not to attend the hearing and the panel decided that his absence is voluntary. The panel also agreed with Mr Micklewright’s submission that an adjournment would not secure Mr Wogan’s attendance. The panel considered that there is a public interest in this hearing concluding expeditiously and noted that five witnesses for Social Work England were to attend the hearing to give their evidence. The panel recognised that

there may be some prejudice to Mr Wogan in not attending the hearing, but decided that his interests were outweighed by the public interest.

Allegation(s)

Whilst registered as a Social Worker:

1. *On one or more occasions between 21 November 2019 and 23 January 2020 you:*
 - (a) *Kissed Service User A*
 - (b) *Hugged Service User A*
 - (c) *Touched Service User A's breast(s)*
 - (d) *Touched Service User A's vagina*
2. *On a date unknown between 21 November 2019 and 3 January 2021 you provided, or caused to be provided, a mobile telephone to Service User A.*
3. *Between 21 November 2019 and 23 January 2020 you exchanged text messages with Service User A.*
4. *Your conduct at paragraphs 1, 2 and 3 above:*
 - (a) *Breached professional boundaries*
 - (b) *Was sexually motivated*

The matters set out at paragraphs 1, 2, 3 and 4 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct.

Preliminary matters

Hearing in private

11. In his e-mail dated 17 November 2021 Mr Wogan stated "At past hearings there was some precedent set around confidentiality of my case due to those personal circumstances. I respectfully request this to continue at the final hearing". Representatives from Social Work England referred Mr Wogan to the powers of the panel set out in rule 38 of the Rules, and explained the position that the final hearing would be heard in public unless the panel exercises its powers to make an exception. Mr Wogan has not provided any further details or information for the

panel to consider when reviewing his request. The panel treated Mr Wogan's request as an application that the entire hearing should be heard in private.

12. Mr Micklewright opposed the application for the entire hearing to be heard in private. He referred the panel to its powers under rule 38 and the principle of open justice which is underpinned by Article 6 of the European Convention on Human Rights. Mr Micklewright submitted that it may be appropriate for the panel to hear limited parts of the hearing in private where the evidence relates to the health of Mr Wogan or a witness, but that otherwise the hearing should be in public. Mr Micklewright submitted that Mr Wogan had not identified any basis on which the hearing should be heard in private.
13. The Legal Adviser referred the panel to its powers under Rule 38. The panel may decide to hear either the whole or part of the case in private where it would be appropriate having regard to "the vulnerability, interests or welfare of any participant in the proceedings". The Legal Adviser advised that the panel should exercise its powers under Rule 38 in accordance with the requirement that the hearing should be fair and compliant with Article 6. This includes the general principle of open and transparent justice, which is subject to limited exceptions. One of the exceptions is to protect the private life of an individual. There should be a compelling reason for protecting the private life of an individual and it is not justified if it is to prevent embarrassment or conceal facts.
14. The panel decided that there was no sufficient basis for it to exercise its power under Rule 38 to decide that the entire hearing should be heard in private. The panel would exercise its power to hear parts of the case in private where the evidence concerned Mr Wogan's health or the health of another individual. This was addressed by the panel through the hearing where references were made to Mr Wogan's health.

Admissibility of hearsay evidence

15. Mr Micklewright referred the panel to paragraph 6 of the statement of Police Constable (PC) GT relating to particulars 1(c) and 1(d) of the Allegation. Mr Micklewright confirmed that this is hearsay evidence and that an issue arises as to whether this evidence is admissible. Mr Micklewright acknowledged that PC GT's statement included other hearsay evidence, but that related to allegations which Mr Wogan has accepted. Mr Micklewright submitted that the panel should exercise its discretion to admit the hearsay evidence under Rule 32(b)(vii) of the Rules.

16. Mr Micklewright submitted that the evidence of PC GT was plainly relevant to particulars 1(c) and 1(d) and that it was fair to admit the evidence, applying principles drawn from cases including *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 and *El Karout v Nursing and Midwifery Council* [2019] EWHC 28.
17. Mr Micklewright explained that Social Work England were not able to call Service User A as a witness because sadly she passed away in July 2021. He explained the timetable of steps taken in Social Work England's investigation. In June 2021 Social Work England began gathering evidence and witness statements. In July 2021 an initial decision was taken not to make contact with Service User A, because of the degree of her vulnerability and because it was considered that other evidence was sufficient. That decision was later reconsidered in October 2021 following advice, but Social Work England were then informed that Service User A had passed away.
18. Mr Micklewright submitted that the panel would have the opportunity to test the reliability of the hearsay evidence because PC GT was available to give oral evidence. The panel should also take into account other sources of evidence such as the note made by PC GT, and the evidence of other allegedly inappropriate contact, such kissing and hugging and evidence of text messages.
19. Mr Micklewright submitted that in all the circumstances it would be fair to admit PC GT's statement relating to particulars 1(c) and 1(d).
20. The Legal Adviser referred the panel to the cases of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 and *El Karout v Nursing and Midwifery Council* [2019] EWHC 28. She advised that admissibility of hearsay evidence is separate from the question of weight and it requires the panel to consider a range of factors as summarised in the case of *Thorneycroft*.
21. The panel carefully reviewed the relevant factors. It recognised the seriousness of particulars 1(c) and 1(d) and acknowledged that the evidence of PC GT was likely to be the decisive evidence in relation to those particulars. On the other hand, the panel noted that Mr Wogan has confirmed that he received the relevant documents from Capsticks and was therefore aware that Social Work England relied on the evidence of PC GT to prove particulars 1(c) and 1(d). Mr Wogan has not advanced a positive case in relation to particulars 1(c) or 1(d) and he has not made any comments on the statement of PC GT. In an e-mail dated 17 November 2021 Mr Wogan stated that he had read the bundle provided by Capsticks and that there "*are no disputed parts*".
22. The panel noted that there is an unavoidable reason why Service User A is not a witness in the proceedings and considered that the steps and the decisions taken by Social Work England in its investigation were rational and reasonable.

23. The panel agreed with Mr Micklewright's submission that there would be an opportunity for the panel to test the reliability of the hearsay evidence because PC GT would be called as a witness by Social Work England. The panel noted that PC GT a, a Police Constable since 2006, is an experienced professional who would be aware of the importance of his evidence in regulatory proceedings.
24. Having carefully considered the relevant factors, the panel decided that it could fairly and properly assess the reliability of the hearsay evidence and that it would be fair to admit it.

Background

25. On 8 July 2020, Social Work England received a referral regarding Mr Wogan from the Specialist Advisor for Safeguarding Adults for South West Yorkshire Partnership Trust.
26. At the time of the events giving rise to the Allegation, Mr Wogan was employed by the Riverside Group ("Riverside"), a registered provider of social care housing. Mr Wogan was not employed as a social worker, but as a Housing Support Officer. He carried a caseload of approximately 25 people who were struggling with their housing and had a support need. Mr Wogan was supervised and line-managed by PL, Team Leader at Riverside.
27. Service User A was referred to Riverside from the local supported accommodation service after being offered a property in November 2019. She suffered from mental health issues along with ongoing physical health needs. She had three children not in her care. She had historical issues involving domestic violence from her partner of twenty years, from whom she had been separated for three years. She had a history of butane abuse and had previously attempted to take her own life.
28. Mr Wogan was allocated as Service User A's Housing Support Worker from 21 November 2019 to 22 January 2020. On 20 January 2020, a call was received from Leeds probation service relating to the receipt of an inappropriate text message from Mr Wogan sent to a service user in their care. It was concluded that the message had been sent in error and was intended for Service User A. PL was asked to investigate and given the contact details for the relevant probation officer, CS. This prompted an investigation.
29. PL spoke to Mr Wogan on 23 January 2020 and discussed the texts which had been sent to the former service user, apparently intended for Service User A. Following a conversation between PL and Mr Wogan about the text messages, PL took screenshots of Mr Wogan's mobile phone and sent the screen shots to AM, Investigating Officer at Riverside.

30. On 27 January 2020, Mr Wogan gave notice of his resignation and Riverside took no disciplinary action.
31. South Yorkshire Police were requested to carry out a welfare check on Service User A and on 13 February 2020 PC GT visited Service User A in her home. In the course of this visit, Service User A disclosed information to PC GT relating to previous interaction between herself and Mr Wogan. Having considered the information provided by Service User A that all contact between herself and Mr Wogan was consensual, the police concluded that no criminal offences had been committed.

Summary of Evidence

i) Social Work England

32. The panel read Social Work England's final hearing exhibits bundle.
33. The panel heard read the witness statements and heard oral evidence from five witnesses called by Social Work England.
 - (a). PS, Principal Adult Psychotherapist employed by South West Yorkshire Partnership NHS Trust. PS described his interaction with Mr Wogan who was referred by his GP to consider which service he should be referred to. PS described an appointment with Mr Wogan on 30 June 2020 in which Mr Wogan stated that he had overstepped a professional boundary as a social worker.
 - (b). CS, Senior Probation Officer Leeds probation services. CS described that she contacted Riverside regarding text messages sent by Mr Wogan which had been received by a service user identified as V.
 - (c). PC GT. He described a welfare visit to Service User A on 13 February 2020 in which Service User A made an unexpected disclosure that she had been sexually assaulted by a social worker, or words to that effect. PC GT then asked questions to clarify whether or not a criminal offence had taken place and decided that there was no offence. PC GT stated that Service User told him that Mr Wogan had kissed her and touched her sexually; the touching was of the breasts and vagina over clothing.
 - (d). LA, People Adviser for Riverside. She exhibited documents relating to Mr Wogan's employment including supervision records. She also exhibited documents relating to an internal investigation carried out by Riverside following information received from Leeds Probation Service.

(e). PL, Team Leader at the Riverside Group. She described that she was asked to investigate inappropriate text messages sent by Mr Wogan to service user V, a client of Leeds Probation Service. PL identified that the intended recipient of the messages appeared to be Service User A. On 20 January 2020 PL spoke to Mr Wogan about the text messages. When Mr Wogan was advised that the texts were inappropriate he responded by saying “*you mean the flirty texts over the weekend*”. PL then asked Mr Wogan to give her his work phone. He did so and when PL checked the text messages she saw that they were inappropriate.

34. The evidence of the Social Work England witnesses was consistent with their witness statements. In the oral evidence the panel identified no hostility of any of the witnesses towards Mr Wogan or any reason for the witnesses to fabricate their evidence. The witnesses each sought to be helpful to the panel.

ii) Social worker

34. The panel read a bundle containing Mr Wogan’s responses. This included Mr Wogan’s response at the case examiner stage and his response to disclosure of Social Work England’s case.

35. In these documents Mr Wogan accepted parts of the Allegation. Mr Wogan was not present or represented and the panel decided that it was not appropriate to treat these documents as formal admissions. It therefore required Social Work England to prove each particular of the Allegation.

Finding and reasons on facts

36. The panel accepted the advice of the legal adviser which included reference to the cases of *Arunakalaivan v GMC* [2014] EWHC 873, *R(Dutta) v GMC* [2020] EWHC 2020, *GMC v Basson* [2018] 505, *Haris v GMC* [2021] EWCA 763, and *PSA v HCPC and Ren-Yi Yong* [2021] EWHC 52. The legal adviser reminded the panel that the burden of proof is on Social Work England and the standard of proof is the balance of probabilities.

Particular 1(a) and 1(b)

37. The panel found particular 1(a) proved by the documentary evidence and the witness evidence of PL, PS and PC GT. The panel noted that in Mr Wogan’s submissions for the case examiners he accepted “I had inappropriate, mutually agreed sexual contact (kissing and hugging) with a female client in the third week of January 2020”.

38. The photographs of text messages taken by PL included the following text message sent by Mr Wogan to Service User A:

"I told my wife we kissed and cuddled on couch only. There was no sex. That was the truth. I also said I stopped going further because I realised what I had done. Mark"

39. This evidence is consistent with the evidence of PS. The panel found that PS was a credible witness. He explained his decisions for making a safeguarding referral and told the panel that after he made the referral he had received confirmation from legal advisers that his actions were appropriate.
40. PS described that he conducted a telephone assessment with Mr Wogan on 30 June 2020. In that assessment Mr Wogan described to PS that his referral to the service was due to his behaviour with a female client (the panel inferred that the female client is Service User A). PS explained to the panel that his practice is to make a written record of all appointments immediately after each conversation and that he builds in time for his appointments to enable him to make these contemporaneous records. PS's written record noted that Mr Wogan described his contact with the female client as including "a brief phase of non-sexual intimacy with a female client" and "one incident of 'fumbling about io [sic] the sofa for about 15 minutes". Although this note does not expressly refer to kissing, there is a parallel with Mr Wogan's text message which does refer to kissing.
41. The text message is also consistent with the hearsay evidence of PC GT. The panel decided that it was fair and appropriate to give weight to the hearsay evidence of PC GT. PC GT is an experienced professional. In his role as an experienced police constable since 2006 he understands the importance of accuracy and reliability in any evidence given to courts or tribunals. PC GT's visit to Service User A was a welfare visit and he explained that he was not expecting her to report or reveal information relating to her contact with Mr Wogan. PC GT had no reason or motive to exaggerate or embellish his evidence and no part of his evidence was challenged by Mr Wogan. Mr Wogan's comment in his e-mail dated 20 January 2021 was that he had read the final hearing bundle and was *"not opposed to any supporting statements or evidence within it"*.
42. The panel found that PC GT's evidence was professional, credible, reliable, and consistent with other evidence.
43. PC GT told the panel that shortly after his visit on 13 February 2020 he completed a written intelligence report. The panel was not provided with a copy of that report. The panel was provided with an undated written note made by PC GT which was prepared for Social Work England's investigation. PC GT prepared this note based on his intelligence log and his recollection of the visit. In the note PC GT recorded that "During the conversation Service User A stated that her Support Worker at the time, Mark Wogan, had recently been kissing and touching her sexually".

44. He explained that he had a good recollection of his visit to Service User A because of the unusual circumstances that she was reporting sexual contact with an individual who was a professional worker in a position of trust.
45. The panel found particular 1(b) proved by the documentary evidence, and the witness evidence of PL, PS and PC GT. The evidence and reasons are the same as those for particular 1(a).

Particulars 1(c) and 1(d)

46. The panel found particular 1(c) proved by the documentary evidence and the evidence of PC GT. The panel also noted supporting contextual evidence (as described above relating to 1(a) and 1(b)).
47. The panel carefully scrutinised the reliability of PC GT's evidence, particularly as this was the decisive evidence for particular 1(c). For the reasons explained above the panel decided that it was fair and appropriate to give weight to PC GT's evidence generally. Specifically in relation to the evidence relating to particular 1(c), the panel noted PC GT's confidence in his recollection of Service User A's account. PC GT explained that it was unclear in Service User A's initial disclosure whether or not a criminal offence may have been committed. He therefore took her through a series of questions which were designed to identify the type of physical contact that had taken place and whether or not it was consensual.
48. In his written note for Social Work England's investigation PC GT recorded that Service User A stated that Mr Wogan "touched her sexually", but he did not provide the specific details contained in his witness statement of that touching. The panel accepted PC GT's explanation that in his written note he had summarised Service User A's account, and not elaborated on the details of the touching. The panel understood that PC GT's focus was on whether a criminal offence had been committed and therefore the details of her consent were important for him.
49. The panel also considered whether the information provided by Service User A to PC GT was reliable. PC GT described Service User A as being sleepy, but not intoxicated or unable to answer questions. There is ample evidence, including in the text messages, that Service User A wanted a relationship with Mr Wogan, and she had no reason to fabricate her account to PC GT. The other information provided by Service User A, such as the kissing was reliable, and has been confirmed by Mr Wogan himself in his text message.
50. The panel noted that PC GT's evidence is consistent with other evidence which describes Mr Wogan's behaviour towards Service User A in generic terms. For example, it is consistent with PS's account of Mr Wogan's description of "fumbling" on the sofa and Mr Wogan's own description of mutually agreed sexual contact.

51. In all the circumstances, including the absence of any objection by Mr Wogan to any part of the evidence, the panel decided to give weight to the evidence of PC GT.
52. PC GT stated that Service User A reported that Mr Wogan touched her breasts and vagina over clothing.
53. The panel found particular 1(d) proved by the documentary evidence and the evidence of PC GT. The evidence and reasons are the same as those for particular 1(c).

Particular 2

54. The panel found particular 2 proved by the documentary evidence and the witness evidence of LA and PL.
55. In his response to the case examiners Mr Wogan accepted that he had provided Service User A with a pay as you go handset.
56. The panel was provided with the Gateway written records for Service User A made by individuals who had contact with her, including Mr Wogan. In those notes Mr Wogan made a record on 21 January 2020. He recorded a domestic situation relating to Service User A on 9 January 2020 and that *“at that visit on 10th day after this domestic situation I had donated a mobile ph to help her address her isolation and fear I he returns. She said he might so the timing of the ph was helpful to restore some security and I advised her to call the police if she is scared if he comes back”*. The panel inferred that “ph” refers to a phone.
57. In her oral evidence PL explained the Gateway recording system and confirmed that this case note was made by Mr Wogan.

Particular 3

58. The panel found particular 3 proved by the documentary evidence and the witness evidence of LA and PL.
59. SL made a contemporaneous case note of verbatim texts sent to “V” and PL took photographs of text messages that she obtained from Mr Wogan’s phone in the meeting on 20 January 2020.
60. The panel noted examples of the text messages exchanged between Mr Wogan and Service User A.

Particular 4(a)

61. The panel found particular 4(a) proved in relation to particulars 1, 2 and 3.
62. The panel noted that Mr Wogan accepts that his conduct was inappropriate and that he advised SL in the telephone consultation on 30 June 2020 that he had overstepped professional boundaries.
63. The panel found that the conduct of Mr Wogan in particulars 1(a)-1(d) was entirely unprofessional and a breach of professional boundaries. The contextual evidence demonstrated that there was no professional reason or explanation for the kissing and hugging of Service User A. The sexual touching in 1(c) and 1(d) is by its nature unprofessional and a breach of professional boundaries.
64. The panel found that the conduct in particular 2 was a breach of professional boundaries. In his role as Housing Support Officer Mr Wogan could have professionally assisted Service User A in obtaining a phone, but he should not have himself provided her with a phone. LA explained in her evidence that if a Service User was in need of a phone, Riverside would never allow a Housing Support Officer to purchase a mobile phone. PL did not recollect speaking to Mr Wogan about Service User A requiring a phone. She would have expected Mr Wogan to have explored with other charities or services to see if a phone could be provided.
65. The panel also found that Mr Wogan's conduct in particular 3 was a breach of professional boundaries. The content of some of the texts was inappropriate. They included content which was emotional and concerned a personal and non-professional relationship between Mr Wogan and Service User A. The panel also noted the evidence that texts were exchanged between Mr Wogan and Service User A outside Mr Wogan's normal working hours (for example texts sent in the evening on 20 January 2020). Mr Wogan would not be expected to communicate with service users outside these hours unless this had been pre-arranged with a manager.

Particular 4(b)

66. The panel found particular 4(b) proved in relation to particulars 1, 2 and 3.
67. The panel noted that Mr Wogan in his submissions has not directly accepted that his behaviour was sexually motivated. However, he has described the contact as inappropriate sexual contact. He also stated that he recognised that what happened was inappropriate.

68. The panel found that the conduct in particular 1(a)-(d) was sexually motivated. The conduct in particulars 1(c) and 1(d) was overtly sexual and the panel therefore drew an inference that it was sexually motivated. The conduct in particulars 1(a) and 1(b) is connected with particulars 1(c) and 1(d), and there is no possible explanation for it, other than it is sexually motivated. At the time the conduct in particulars 1(a)-(d) occurred it was for sexual gratification.
69. The panel found that the conduct in particular 2 was sexually motivated. The provision of a mobile phone enabled and assisted inappropriate communication between Mr Wogan and Service User A and, at that time, it was in pursuance of a sexual relationship. The panel however recognised that while Mr Wogan's primary motivation in providing the phone was sexual; he may have had mixed motives in that he also wished to support her, as recorded in his note on the Gateway system. Mr Wogan was aware that Service User A's former partner was abusive and this made Service User A fearful.
70. The panel also found that the text messages were sexually motivated. The content of the text messages was inappropriate and emotional. They formed part of the personal relationship between Mr Wogan and Service User A. Mr Wogan described the texts as "*flirty*" to PL. The panel recognised that in some of the texts, Mr Wogan was stepping back from his relationship with Service User A, having begun to appreciate that it was wrong and harmful to Service User A. Nevertheless, Mr Wogan was continuing to engage in the exchange of messages and at that time was he was continuing to participate in the ongoing personal relationship.

Finding and reasons on grounds

71. The panel was provided with a Stage 2 bundle that included the entirety of Mr Wogan's unredacted submissions, including references to an interim order.
72. Mr Micklewright submitted that the facts found proved were sufficiently serious to amount to the statutory ground of misconduct. He referred to the submissions set out in the statement of case.
73. The panel accepted the advice of the legal adviser. There is no statutory definition of misconduct, but guidance was given in the case of *Roylance v GMC* 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*".

74. The panel noted that a breach of standards is not conclusive, but may be part of the panel's consideration of the circumstances. It also noted that the 'falling short' must be 'serious' (*Nandi v GMC*).

75. The panel decided that Mr Wogan's conduct in particulars 1-4 amounted to a breach of the following standards for social workers in England:

1.7 Recognise and use responsibly, the power and authority I have when working with people, ensuring that my interventions are always necessary, the least intrusive, proportionate, and in people's best interests.

2.3 Maintain professional relationships with people and ensure that they understand the role of a social worker in their lives.

3.1 Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

5.1 As a social worker, I will not abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

5.2 As a social worker, I will not behave in a way that would bring into question my suitability to work as a social worker whilst at work, or outside of work.

76. The panel considered that Mr Wogan's conduct was reprehensible and a serious departure from the required standards. His behaviour had the potential to cause serious harm to Service User A, who was extremely vulnerable. As an experienced social worker and having worked with Service User A as her Housing Support Officer, Mr Wogan knew and understood Service User A's vulnerability.

77. Mr Wogan also understood that a breach of professional boundaries had the potential to harm Service User A. In Mr Wogan's text messages, when he had begun to step back from a personal relationship, he expressly acknowledged that his actions may have caused harm.

"I did hurt you and dont think I can eva make it better. I'm sorry for this. I hope you find some hope that in my actions at the end to not go further gives you some reassurance that we make mistakes and can learn from them. Mark.

..

For all those who should have helped I am that person who could have but didn't I have let yoi down. Mark

...

That's my reality wish I could change it but I cant but I have been shocked and saddened by my actions. Mark"

78. Mr Wogan had the opportunity to speak to his manager or another manager about any blurring of professional boundaries, but did not do so.
79. Mr Wogan was not working in the role of a social worker, but was using his skills as a social worker. He was in a position of trust and authority in relation to Service User A.
80. Although the physical contact between Mr Wogan and Service User A took place on a single occasion, this incident was not a spontaneous and momentary lapse of judgement. It is linked to the conduct in particulars 2 and 3 which involved decisions such as the provision of a phone and sending texts over a period of time.
81. Mr Wogan in his submissions invited the panel to consider that he was under some stress at the time of the incident and was suffering from what he described as [PRIVATE]. He did not raise this issue with his manager in supervision and there was no independent or medical evidence placed before the panel that such circumstances had any bearing on Mr Wogan's actions.
82. The requirement to maintain proper professional boundaries is fundamental for social workers. The boundaries are in place to protect service users and social workers and they are essential for safe and effective social work practice.
83. Having considered the context and surrounding circumstances, the panel decided that Mr Wogan's actions in particulars 1-4, considered both individually and cumulatively, would be regarded as deplorable by fellow professionals and were sufficiently serious to amount to misconduct.

Finding and reasons on current impairment

84. Mr Micklewright submitted that Mr Wogan's fitness to practise is currently impaired. He submitted that in Mr Wogan's submissions there was evidence of some insight, but there was no evidence of detailed reflection and there were elements of minimisation of the conduct with Mr Wogan pointing towards other factors that were responsible for his behaviour. Mr Micklewright submitted that there was no evidence of remediation and that there remains a significant risk of repetition of the conduct occurring. Mr Micklewright also submitted that a finding of current impairment was required to mark the nature of Mr Wogan's misconduct which breached a fundamental tenet of the profession.
85. The panel accepted the advice of the Legal Adviser. It assessed Mr Wogan's fitness to practise at today's date, having regard to the need to protect the public and the wider public interest.

86. The panel carefully reviewed the information in the Stage 2 bundle. In his submissions to the case examiners Mr Wogan described that he made a self-referral to his GP and that he will be engaging with therapeutic remedial work *“to understand the psychological mechanisms that have triggered my actions and to understand and to work to avoid repeating actions that undermine my professional integrity”*. Mr Wogan described that he had completed an online intensive trauma course for social workers who work with clients who experienced traumatic life events. [PRIVATE].
87. On 24 June 2021 Capsticks sent a letter to Mr Wogan inviting him to give his consent for Social Work England to contact his GP or healthcare professional. The letter explained that the referral did not raise health related concerns, but that Mr Wogan had referred to health in his submissions and that he suggested that health may have been a causal factor in his actions.
88. Mr Wogan replied to this request on 25 June 2021 declining to give his consent to Social Work England contacting his GP or healthcare professional. He suggested that the correspondence might be construed as bullying.
89. The consequence of Mr Wogan’s decision not to give his consent is that the panel has no independent medical evidence on Mr Wogan’s health and no independent evidence of any causal connection between Mr Wogan’s health and his actions. In these circumstances, the panel gave very little weight to the information provided by Mr Wogan relating to his health.
90. The panel considered the level of Mr Wogan’s insight. In the text messages sent to Service User A Mr Wogan had started to step back from a relationship, recognising that it was wrong and apologising to the service user. In an e-mail dated 20 January 2021, Mr Wogan expressed his regret for his actions and apologised. He stated:
- “Whilst I recognise my actions have consequently negatively impacted upon a vulnerable adult, and these notions will stay with me for life which I cannot escape from, I am deeply apologetic to the vulnerable woman and to Social Work England for my actions falling below standards of care. I have wilfully sought remedial action and am engaging to gain insight and understand my actions and behaviour”*.
91. The panel considered that this expression of regret was some evidence of insight, but that Mr Wogan has not demonstrated that he has reflected in depth on his own responsibility for his actions or shown an understanding of his abuse of his power and authority. His primary focus appears to be on establishing a psychological explanation for his actions and attributing blame to these matters, rather than taking personal responsibility. In his correspondence he has focused on his criticism of Social Work England, the impact of an interim order on himself and his family, and his expectation that Social Work England should be supporting him. The panel found that Mr Wogan’s approach was disappointingly self-focused and that he had demonstrated little insight.

92. The panel considered whether the conduct in this case is remediable. The conduct is behavioural and not easily remediable. There was no evidence before the panel that Mr Wogan has taken remedial steps. While Mr Wogan referred in his submissions to his learning and development through psychological therapy, the panel was not able to give weight to this information because of the absence of any independent evidence.

93. The panel next considered the risk that Mr Wogan might repeat similar misconduct. In his submissions for the case examiners, Mr Wogan highlighted his previous history:

“In twenty plus years of working for the communities I live in with many vulnerable adults, children and families, not once has a concern been raised and upheld against me. This is the first and only time that I have found myself in this type of situation and it is the first and only time I have behaved in this way.”

94. The panel acknowledged that there is no evidence that Mr Wogan has behaved in a similar way previously, but this did not reassure the panel that there was no risk of repetition. The panel took into account the nature of the sexual misconduct. It was not a momentary lapse, but involved decisions which required thought and planning such as the provision of a mobile phone. There were also multiple text messages over a period of time. The panel also took into account the limited insight demonstrated by Mr Wogan and the absence of evidence of remedial steps. Having reviewed all the circumstances, the panel concluded that there is a significant risk of repetition.

95. The panel next considered the nature and gravity of the misconduct and its impact on public trust and confidence in the profession. The panel considered that aspects of the conduct which would particularly concern an informed member of the public are that the conduct involved an abuse of the trust placed in Mr Wogan by an extremely vulnerable service user, the degree to which professional boundaries were crossed in that there was conduct of a sexual nature, the evidence of some emotional harm to Service User A and the risk of serious harm. The panel considered that an informed member of the public would be shocked if the panel were not to make a finding of current impairment.

96. The panel also decided that a finding of impairment is necessary to mark the seriousness of Mr Wogan’s misconduct and his breach of a fundamental tenet of the profession that social workers do not abuse the trust placed in them by service users.

97. The panel reviewed the test for fitness to practise proposed by Dame Janet Smith in her fifth Shipman report and decided that three limbs of that test applied in particular:

- Mr Wogan has in the past and is liable in the future to put a service user at risk of harm;
- Mr Wogan has in the past and is liable in the future to bring the social work profession into disrepute;

- Mr Wogan has in the past and is liable in the future to breach one of the fundamental tenets of the profession.

98. The panel therefore concluded that Mr Wogan's fitness to practise is impaired to protect members of the public from the risk of repetition, and in the wider public interest to maintain public trust and confidence in the profession and maintain and uphold the required standards for social workers in England.

Decision on sanction

99. Mr Micklewright referred the panel to Social Work England's Sanctions Guidance (SG). He highlighted relevant paragraphs including the following:

"Abuse of trust. 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 explicitly. 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.

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.

Sexual misconduct.

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"

100. Mr Micklewright highlighted aggravating factors and submitted that the appropriate and proportionate sanction was a removal order.
101. The panel considered Mr Wogan's submissions. He has consistently stated that he has "rescinded my social work registration", and that he does not wish to re-enter the profession or use the protected title of "social worker". Although Mr Wogan has expressed his wish to be removed from the register, he has not been permitted to do so while the fitness to practise proceedings are ongoing.
102. The panel accepted the advice of the Legal Assessor. Her advice included reference to the cases of *Bolton v the Law Society* [1994] 1WLR 512 and *Kamberova v NMC* [2016] EWHC 2955.

103. The primary function of any sanction is to protect the public. This includes protecting the health, safety, and welfare of members of the public, maintaining public trust and confidence in the profession, and maintaining and upholding the required standards for social workers in England. The panel applied the principle of proportionality, balancing Mr Wogan's interests against the public interest.

104. In its deliberations the panel identified the following mitigating factors:

- the absence of any previous regulatory findings
- Mr Wogan's acceptance of parts of the Allegation, his apology, and expression of regret.

105. The panel identified the following aggravating factors

- Service User A was extremely vulnerable and Mr Wogan had knowledge of her vulnerability;
- The conduct involved aspects of planning such as the provision of a mobile phone and took place over a period of time;
- Emotional harm to Service User A and risk of serious harm;
- Mr Wogan's deflection of his personal responsibility and focus on himself rather than the impact of his behaviour on Service User A, the public, and the profession.

106. The panel agreed that the paragraphs from the SG on abuse of trust and sexual misconduct as highlighted by Mr Micklewright applied to the circumstances of this case.

107. The sanction should be the least restrictive which is sufficient to provide the necessary degree of public protection. The panel therefore considered the sanctions in ascending order of severity.

108. The panel considered the option of taking no action, giving advice, or imposing a warning. These options do not restrict Mr Wogan's registration and therefore would be insufficient to protect the public, given that the panel has concluded that there is a risk of repetition of similar misconduct. These options would also be insufficient to maintain public confidence in the profession and to mark the seriousness of Mr Wogan's departure from the required professional standards.

109. The panel next considered the option of a conditions of practice order. The panel decided that conditions of practice would be an insufficient sanction to mark the gravity of Mr Wogan's misconduct which includes a breach of trust and sexual misconduct. The seriousness of this conduct is explained in the SG. The panel also considered that conditions of practice would not be appropriate because the misconduct involves a behavioural failing.

110. Conditions of practice must be workable and this requires the social worker to demonstrate a sufficient level of insight and full engagement and co-operation with Social Work England. Mr Wogan is clear that he does not wish to engage with the process to this extent and that he has no intention to practise as a social worker.
111. The panel therefore decided that conditions of practice would be unworkable and insufficient to protect the public.
112. The panel next considered the option of a suspension order. The guidance in the SG is that a suspension order may be appropriate where the case falls short of requiring removal from the register.
113. In its decision on impairment the panel explained why it gave very little weight to the information presented by Mr Wogan relating to his health or personal circumstances because of the absence of independent evidence. While the panel noted the absence of any previous regulatory findings and Mr Wogan's apology and expression of regret for his actions, it considered that these factors carried little weight when considered in the context of the seriousness of the misconduct and the aggravating factors.
114. The panel has found that there is a significant risk of repetition and the panel must therefore impose a sanction which protects members of the public, including vulnerable service users, against that ongoing risk.
115. The panel noted that Mr Wogan has been subject to an interim order which has given him a full opportunity to reflect on his actions. In Mr Wogan's submissions the panel detected no signs of development in the level of Mr Wogan's insight. He has directed his attention to various criticisms of Social Work England. Mr Wogan's stated desire is to remove himself from the register and he wishes the regulator to respect his choice in this respect. In the circumstances, the panel concluded that there is no realistic prospect that Mr Wogan will be rehabilitated to safe practice as a social worker.
116. The panel also considered that a suspension order would not be sufficient to mark the gravity of Mr Wogan's conduct, given that it involves sexual misconduct towards an extremely vulnerable service user in breach of the trust that she placed in Mr Wogan. The sexually motivated conduct was an abuse of Mr Wogan's authority and power. It was not limited to a one off spontaneous event, but included elements of planning such as the provision of a phone to the service user. Such conduct is a breach of a fundamental tenet of the profession, and it is fundamentally inconsistent with the principles and values which underpin the profession.
117. Having carefully reviewed the nature and gravity of the misconduct the panel decided that a suspension order would not be sufficient to maintain confidence in the profession or to maintain proper professional standards for social workers in England.

118. In its decision to reject the option of a suspension order the panel had in mind the requirement of proportionality and the need to consider Mr Wogan's interests. The panel recognised that the imposition of the ultimate sanction of a removal order may have a negative impact on Mr Wogan's interests, including his reputational interests. The panel decided that the need to protect the public and the public interest outweighed Mr Wogan's interests.
119. Having concluded that a suspension order would be insufficient to protect the public, maintain confidence in the profession and maintain proper professional standards, the panel decided that the appropriate and proportionate sanction is a removal order. This sanction sends a clear message to the public and members of the profession that registered social workers must not breach the trust placed in them by vulnerable service users and must not abuse their power and authority.

Interim order

120. Mr Micklewright applied for an interim suspension order for 18 months under Regulation 11(1)(b) of the Schedule 2 of the Social Workers Regulations 2018 on the ground that it was necessary for the protection of the public.
121. The panel received advice from the legal adviser that it may make an interim order if it was necessary for protection of the public or in the best interests of Mr Wogan. It should first consider an interim conditions of practice order as the less restrictive option, and it should decide the length of the interim order.
122. The panel noted that the case involved a finding of a risk of repetition and therefore a risk of harm to the public. In the circumstances, the panel considered that the public required immediate protection and public confidence may be undermined if there was no order in place during the currency of any appeal period. Any other decision would be inconsistent with the panel's decision on impairment and sanction.
123. The panel decided that an interim conditions of practice order would be unworkable and insufficient to protect the public for the same reasons as set out in its decision on sanction. Therefore, an interim suspension order was the proportionate and appropriate order. The panel also decided that the interim order should be in place for a period of 18 months, to allow for the time that any appeal might take to be concluded given the Covid related backlog in the courts. The panel noted that in the event that no appeal is made, the interim order will fall away after the end of the 28 day appeal period.

Right of Appeal

124. 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.

125. 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.

126. 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.

127. 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

128. 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.

129. 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.