



Social Worker: Lee Rathbone
Registration Number: SW124866
Fitness to Practise: FTPS-69317
Final Hearing

Dates of hearing: 18 to 22 July 2022

Hearing venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This was a final hearing of allegations against Mr Lee Rathbone held under Part 5 of the Social Workers Regulations 2018.
2. This hearing was held remotely.
3. Mr Rathbone did not attend and was not represented.
4. Social Work England was represented by Ms Rebecca Steels, case presenter from Capsticks LLP, solicitors to Social Work England.
5. The panel of adjudicators conducting this hearing (the “**panel**”) and the other people involved in it were as follows:

Name	Role
Hillary Nightingale	Chair
Joma Wellings-Longmore	Social Worker Adjudicator
Derek McFaull	Lay Adjudicator

Hannah Granger	Hearings Officer
Mollie Roe	Hearing Support Officer
Charles Redfearn	Legal Adviser

Service of Notice:

Submissions on service

6. Ms Steels, on behalf of Social Work England, referred the panel to the requirements of rules 14 and 15 of Social Work England’s Fitness to Practise Rules (the “**FTP Rules**”). She also referred the panel to the statement of service contained in the service bundle and submitted that, although the employee of Capsticks LLP who had made that statement had not herself sent the notice to Mr Rathbone, she nevertheless had full knowledge of the present case and her statement set out the steps taken to serve notice of this hearing on Mr Rathbone.
7. Referring the panel to the copy of the notice of this hearing in the service bundle, Ms Steels submitted that, as required by the FTP Rules, the notice specified the date, time and place of this hearing and was accompanied by Social Work England’s statement of case.
8. Ms Steels informed the panel that the notice had been sent to Mr Rathbone by email and by Royal Mail special delivery, a next-day delivery service. She then submitted the notice had been sent to the email and postal addresses which appeared on Social Work England’s register entry for Mr Rathbone and referred the panel to the copy of that entry contained in the service bundle.

9. With regard to the copy of the notice sent by email, Mr Steels referred the panel to the copy of the notice in the bundle and to the copy of the email under cover of which the notice was sent to Mr Rathbone.
10. With regard to the copy of the notice sent by Royal Mail special (next day) delivery, Ms Steels referred the panel to the copy of the Royal Mail delivery slip in the service bundle which showed that delivery occurred on 14 June 2022.
11. Finally, Ms Steels submitted that the requirement in rule 14(a) of the FTP Rules for notice to be served not less than 28 calendar days before the commencement of this hearing had been satisfied that, by virtue of rule 45 of the FTP Rules, the notice sent by email should be treated as being served on 13 June 2022 and the notice sent by Royal Mail special delivery should be treated as being served on 14 June 2022.

Legal advice on service

12. The panel accepted the advice of the Legal Adviser in relation to service of notice. This included reference to paragraph 10(2) of Schedule 2 to the Social Workers Regulations 2018 and rules 14, 15, 44 and 45 of the FTP Rules.

Panel's decision on service

13. The panel had careful regard to the contents of the service bundle, which included the following documents:
 - An extract from Social Work England's register (the "**Register**") showing the email and postal addresses for Mr Rathbone held by Social Work England.
 - A copy of the notice of this final hearing dated 13 June 2022 which was addressed to Mr Rathbone at his email and postal addresses as they appear on the Register. The notice specified the date, time and place of this final hearing and was accompanied by a statement of case, setting out those matters that were agreed between the parties, those matters that were not agreed and the basis for alleging that Mr Rathbone's fitness to practise was impaired.
 - A copy of a covering email dated 13 June 2022, which was sent by an employee of Capsticks LLP and addressed to Mr Rathbone at his email address as it appears on the Register and which referred to Mr Rathbone's "fitness to practise case" and stated that it had attached to it a copy of a letter, a statement of case and related documents.
 - A copy of a signed statement of service which was made on 14 July 2022 by an employee of Capsticks LLP and which confirmed that, on 13 June 2022, a colleague had sent the notice of this final hearing and related documents to Mr Rathbone by email to his email address as it appears on the Register. The statement of service also stated that a copy of the notice had been sent by Royal Mail special (next day) delivery service to Mr Rathbone at his postal address as it appears on the Register.

- A copy of the label for the notice sent by Royal mail special delivery, which gave Mr Rathbone's name and post code and a tracking number.
 - A copy of a Royal Mail delivery slip which bore the same tracking number as the label and stated that an item was delivered at 10:26 on Tuesday 14 June 2022 and that it had been signed for by "Rathbone". The delivery slip also bore a signature, which appeared to be "S Rathbone".
14. Having had regard to rules 44 and 45 of the FTP Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this final hearing had been served on Mr Rathbone in accordance with rules 14, 15 and 44(a) of the FTP Rules and that the requirements of paragraph 10(2) of Schedule 2 to the Social Workers Regulations 2018 had been fulfilled.

Proceeding in the absence of Mr Rathbone:

Submissions on behalf of Social Work England

15. Ms Steels, on behalf of Social Work England, submitted that, as the panel had concluded that Mr Rathbone had been served with notice of this hearing, he was aware of this hearing but had failed to attend and therefore the panel's discretion to proceed in his absence under rule 43 of the FTP Rules had been engaged.
16. Ms Steels informed the panel that, although Mr Rathbone had engaged with the present fitness to practise proceedings, he had not done so for some time. In that regard, Ms Steels stated that submissions had been made by Mr Rathbone's representatives to Social Work England's case examiners in October 2020 and that, in October 2021, he had attended an interim order hearing but had failed to attend subsequent interim order reviews. She added that Mr Rathbone had otherwise not responded to communications in relation to the fitness to practise proceedings against him and that, in relation to the present hearing, he had not provided any written submissions or requested a postponement or adjournment. Ms Steels then submitted that, in the circumstances, Mr Rathbone, with full knowledge of the present hearing, had voluntarily and deliberately absented himself from it and there was no guarantee that an adjournment would secure his attendance.
17. Ms Steels then referred the panel to the cases of *R v Jones [2003] UKPC 1* and *General Medical Council v Adeogba [2016] EWCA Civ 162*, which set out factors which the panel should take into account when deciding whether to exercise its discretion to proceed in Mr Rathbone's absence. She stated that these factors included the need to balance fairness to Mr Rathbone with fairness to Social Work England and the public; Mr Rathbone's duty as a social worker to engage with Social Work England as his regulator and with the present fitness to practise proceedings; Social Work England's inability to compel Mr Rathbone to attend this hearing; that Mr Rathbone had waived his right to attend this hearing by voluntarily absenting himself from it.

18. Ms Steels added that, given that the allegations against Mr Rathbone were serious and had arisen over three years ago, it was in the public interest and in the interests of justice that the present hearing should proceed without further delay.

Legal advice on proceeding in absence

19. The panel accepted the advice of the Legal Adviser in relation to proceeding in Mr Rathbone's absence. That advice included reference to rule 43 of the FTP Rules, Social Work England's guidance entitled 'Service of Notices and Proceeding in the Absence of the Social Worker' and the cases of *R v Jones [2003] UKPC 1* and *General Medical Council v Adeogba [2016] EWCA Civ 162*.

Panel's decision on proceeding in absence

20. The panel consider that its discretion to proceed in Mr Rathbone's absence under rule 43 of the FTP Rules had been engaged as (a) Mr Rathbone was not present or represented at this hearing and (b) the panel had concluded that notice of this hearing had been served on him in accordance with FTP Rules.
21. The panel noted that Mr Rathbone's engagement with the fitness to practise proceedings against him over the past two years had been limited to having written representations made on his behalf to Social Work England's case examiners in October 2020 and attending an interim order hearing in October 2021. This indicated to the panel that Mr Rathbone was aware of the progress of those proceedings but had chosen to participate in them only to limited extent. Similarly, the panel considered that Mr Rathbone was aware of this final hearing as it had concluded that he had been served with notice of it but he had nevertheless neither attended it nor sent a representative, nor had he made any written submissions or requested a postponement or adjournment. In the circumstances the panel concluded that:
 - Mr Rathbone had voluntarily absented himself from the present hearing and chosen not to participate by way of written submissions or instructing a representative; and
 - It was highly unlikely that an adjournment would secure his attendance or participation.
22. The panel noted that the events to which the present proceedings relate occurred over three years ago and that the allegations against Mr Rathbone were serious in that they involved dishonesty, creating a false record and accessing service users' personal data without authority. The panel therefore considered that it was in the interests of justice and in the interests of Social Work England's statutory objective of protection of the public (as defined in s.37 of the Children and Social Work Act 2017) that this hearing should proceed without further delay. In addition, moving the present hearing to a later date would cause inconvenience to witnesses and other participants and was likely to make it more difficult for witnesses to recall events.

23. Given the above conclusions, the panel considered that the balance of fairness clearly lay in this final hearing proceeding in Mr Rathbone's absence and that there was no good reason for it not to proceed. Therefore, in exercise of its discretion under rule 43 of the FTP Rules, the panel decided that this final hearing should proceed in Mr Rathbone's absence.

Allegations and Context

Allegations

24. The allegations against Mr Rathbone (the "**Allegations**") are as follows:

Whilst working for Liverpool City Council, you:

1. *Between 22 January 2019 and 25 January 2019, you:*
 - a) *Left ASYE mandatory training early without informing any manager;*
 - b) *Told your manager the reason you left the ASYE mandatory training early was because you had been to visit Service User A which was untrue;*
 - c) *Created a false record of the visit to Service User A.*
2. *Submitted a Portfolio to Hope University as part of your Social Work Degree which contained forged signatures.*
3. *Accessed one or more case files without the appropriate authority to do so.*
4. *Your actions at 1.b), 1.c) and 2 were dishonest.*

The matters outlined in regulatory concerns (1), (2) (3) and (4) amount to the statutory ground of misconduct.

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

Employment Context

25. The employment context in which the alleged events occurred was as follows:
- Whilst a social work student at Hope University, Mr Rathbone had undertaken a placement in the Assessment Team in Children's Services at Liverpool City Council ("**LCC**") between May and September 2018.
 - In October 2018, Mr Rathbone was interviewed for, and was offered, a job in LCC's Children's Services as a social worker. This was subject to his submitting a portfolio of work, his being registered by the Health and Care Professions Council (the "**HCPC**") and LCC's completing pre-employment checks on him. In the meantime, from 15 October 2018, Mr Rathbone worked for LCC through an agency as a family support worker.

- On 9 January 2019, Mr Rathbone was registered by HCPC as a social worker and, from that time he was engaged by LCC through an agency as a social worker.
- However, when the concerns to which these proceedings relate were referred to the HCPC, the LCC terminated Mr Rathbone's engagement as an agency social worker and withdrew its offer of permanent employment.
- After he graduated, Mr Rathbone returned to work in that team and, at the time of the events to which the Allegations relate, he was undertaking his assessed and supported year in employment ("**ASYE**").

Summary of Evidence

Social Work England

26. Social Work England called two witnesses. They were:
- Ms D, who, since 2017, had been the Team Manager of the Assessment Team in Children's Services at LCC; and
 - Ms C, who, at the time of the events to which the Allegations relate, was a consultant social worker engaged by Liverpool City Council ("**LCC**") and working in the Children's Services department.

Evidence of Ms D

27. Ms D made a written witness statement dated 3 May 2022 and adopted this as her evidence in chief.

Allegation 1

28. With regard to Allegation 1, Ms D stated in her witness statement that:
- On 9 January 2019, Mr Rathbone started his ASYE, during which he was required to attend the training sessions arranged by the LCC unless he was attending court or a case conference. If Mr Rathbone was unable to attend a training session, he was required to advise his manager and the ASYE Co-ordinator accordingly. Ms D produced a schedule of ASYE training which, she said had been provided to Mr Rathbone and which Ms D said was mandatory.
 - On 23 January 2019, Ms D had a Sudden Unexplained Death of an Infant ("**SUDI**") meeting with Mr Rathbone. At the meeting, Mr Rathbone asked if he could work from home on a particular piece of work. After this meeting, Ms D received an email from Ms HL, the ASYE Co-ordinator asking why, on the previous day, Mr Rathbone had left a training session early. Mr Rathbone had not mentioned this matter to Ms D during their meeting and it appeared that Mr Rathbone had not informed anyone else of his intention to leave that training session early.

- Ms C then telephoned Mr Rathbone about this matter and then told Ms D about the details of her conversation with Mr Rathbone, as described in Ms C's evidence. Ms D understood from the information provided by Ms C that Mr Rathbone had left the training session about 12:00 noon and that his alleged visit to Service User A would have been completed by around 2:00pm. In such circumstances, Mr Rathbone would have been expected to work on his portfolio, rather than finishing work.
- On 23 January 2019, Ms C also spoke to the Family Support Worker who, according to Mr Rathbone, had spoken to him about Service User A. Ms C then told Ms D about the details of that conversation, as described by Ms C in her evidence.
- On 25 January 2019, Mr Rathbone came into work and Ms D asked him to make a note of his visit to Service User A. Ms D produced a copy of this note (which, in her oral evidence, she confirmed was made on 25 January 2019 at 10:10am). The note referred to Service User A's son needing to be accompanied to school as a particular road was too busy for him to cross independently and to her daughter preferring to have school meals rather than a lunch prepared at home. The note concluded by stating that home conditions were again acceptable, that Service User A did not appear to be in a low mood and that no alcohol was observed in the home. Ms D pointed out that the note did not make any reference to Mr Rathbone discussing Service User A's mental health with her even though he had stated that concerns about her deteriorating mental health had been the reason for his visiting her.
- Also on 25 January 2019, Ms D sent an email to the Service Manager at LCC, setting out the chronology of events up to that point and recording the details which Ms C had provided to her about her conversations with Mr Rathbone and the Family Support Worker.
- On 28 January 2019, Ms D and the Service Manager at LCC met with Mr Rathbone, who admitted that he had left the training session early and had not told anyone about this. He stated that his visit to Service User A lasted about 15 to 20 minutes and that afterwards he had gone home where he had logged onto the LCC system and completed a reflective piece (but he did not produce any evidence of having done so). Mr Rathbone showed Ms D and the Service Manager a screenshot of Apple Maps showing that he was present in the vicinity of Service User A's home at the time he claimed to be there.
- On 29 January 2019, Ms D and the Service Manager visited Service User A, who told them that the last time Mr Rathbone had visited her was before Christmas, when he had brought presents for her children. Ms D asked Service User A whether she was upset with Mr Rathbone about visiting her children at school. Service User A explained that she was annoyed about the questions which the children had been asked and that because she did not know the reason for his speaking to them. Ms D explained that this was due to concerns about Service User A leaving her children alone. Service

User A then stated that, given that explanation, she could understand the reason for Mr Rathbone's speaking to her children. This exchange indicated to Ms D that Mr Rathbone had not explained to Service User A the reason for his visiting her children at school.

- Ms D was not able to challenge Mr Rathbone with the results of her conversation with Service User A as he did not return to work.

29. In her oral evidence, Ms D stated that:

- Around the start of his ASYE, Mr Rathbone would have had a learning agreement meeting with the ASYE Co-ordinator, at which he would have been advised of the ASYE training programme and of the requirement to attend training sessions, as well as the need to notify his manager or the ASYE Co-Ordinator, if he was unable to attend a training session.
- Ms D confirmed that a social worker would not attend ASYE training if they were unwell or if they had to attend a case conference and a duty social worker was not available to attend in their place. She added that, in such circumstances, there would be a discussion about how the social worker could make up for the missed training.
- Ms D could not comment on the number of ASYE social workers who did not attend training sessions as they were several of them spread between different teams.
- Ms D did not think that Service User A would have any reason to lie about Mr Rathbone not visiting her on 22 January 2019 as, when Ms D visited Service user A on 29 January, she spoke very highly about him.
- Ms D stated that it was important for case notes to be accurate so that anyone working with a family is aware of what is happening in relation to that family. She added that fabrication of case notes was unethical and would call LCC's reputation into question.

30. In response to questions from the panel:

- Ms D stated that she did not believe that Mr Rathbone did not realise that ASYE training was mandatory given the discussions which would been held with him before that training commenced. She added that, if an ASYE social worker did not attend the training, his managers would have to consider what steps to take.
- Ms D could not think of a legitimate reason which Mr Rathbone might have had for accessing files which were not open to his team as part of his ASYE learning and development, although she could not exclude the possibility that such a reason might exist.
- Ms D stated that she would normally suggest that an ASYE social worker should look at case files in their team's "tray" in Liquid Logic. She added that files which were not open to a social worker's team would have to be searched for by name.

- Ms D explained that Mr Rathbone already had access to the Liquid Logic system before he became a registered social worker as he had previously worked for LCC as a family support worker. She confirmed that the level of access to the system was the same for students, family support workers and social workers. She added that they all need to undertake the same data protection training in order to obtain a Liquid Logic account, which enables them to access the Liquid Logic system.

Allegation 2

31. With regard to the allegation that Mr Rathbone forged the signatures of Ms D and Ms FM, the Deputy Service Manager, on his portfolio, Ms D stated in her witness statement that:
- Student social workers on placement with the LCC must complete a portfolio of work and have it signed off by Ms D and the Deputy Service Manager. The portfolio should cover all relevant areas of learning, including observed practices.
 - On 30 January 2019, Ms D asked Mr Rathbone to provide a copy of his portfolio as she had not seen the final version. When Mr Rathbone failed to provide this, Ms D obtained a copy from the university where he had studied.
 - On looking through the portfolio, Ms D noticed that the signatures and initials on it which purported to be hers were not in fact hers and she denied having signed or initialled the portfolio. Ms D also noticed that the signature in the portfolio which were purportedly those of the Deputy Service Manager did not appear to be genuine. Ms D spoke to the Deputy Service Manager about this and the Deputy Service Manager told her that she had not signed Mr Rathbone's portfolio. Ms D also produced copies of her signature and that of the Deputy Service Manager.
32. In her oral evidence, Ms D stated that the portfolio was to be completed as part of Mr Rathbone's University placement and needed to be reviewed by her and the Deputy Service Manager and physically signed by them. For that reason, Ms D had, over a period of three or four weeks asked Mr Rathbone four or five times a week to let her have a copy of the final version of his portfolio so that it could be signed off by her and the Deputy Service Manager. However, Mr Rathbone failed to provide her with a copy of that document. In response to a question from the panel, Ms D confirmed that, other than the forged signatures, all of the contents of Mr Rathbone's portfolio were correct.

Allegation 3

33. With regard to the allegation that Mr Rathbone accessed case files without any legitimate reason or authority, Ms D stated in her witness statement that:
- LCC's Workplace Development Co-ordinator conducted an audit of Mr Rathbone's activity on the LCC's systems during his time at LCC. Ms D produced a copy of the results of that audit with service users' surnames redacted.

- The audit showed that, although Mr Rathbone had frequently accessed a number of files on which his team was working, he had also accessed over 125 files relating to cases which were not open to his team. Ms D had marked those files with an X.
- Although Mr Rathbone was permitted to access the files on cases which were open to his team, he had no reason, whether for training or otherwise, to access files on cases which were not open to his team. Mr Rathbone would have been aware of this from the data protection training which he had undertaken. A copy of LCC's data protection policy was produced by Ms D.
- Mr Rathbone would have had to actively search for these files using the service user's name in order to locate and access them. He may therefore have known the people whose files he had located and accessed.

34. In her oral evidence:

- Ms D stated that she thought it unlikely that Mr Rathbone would have had a professional reason to access the files which were not open to his team as he had accessed so many of them.
- Ms D explained that, in order to access files on LCC's Liquid Logic system, employees had to have a Liquid Logic account and, in order to open such an account, they had to complete online training on LCC's data protection policy, which included headed Business use, which stated "*Ensure you only access records that relate to a particular piece of work you are undertaking and don't access records that relate to a person known to you*". Ms D stated that this training was the same for all levels of employee.
- Ms D also provided to the panel a screenshot of the log-in page on the Liquid Logic system, which contained a warning reading "*All colleagues are reminded that you must only access service users' confidential information when you have a legitimate operational reason to do so. You should never access information linked to a person known to you. For more information and details of who to contact please see the guidance below.*"

Personal difficulties

35. Ms D stated in her witness statement that Mr Rathbone had not mentioned that he was experiencing difficulties, or required support, as a result of the death of a child whom he was assessing. In her oral evidence, Ms D stated that when she spoke to Mr Rathbone about that matter, he dismissed her concern and offer of support, saying that it was "something that happens". Ms D added that she therefore told Mr Rathbone that she was there if he needed her and left the matter at that. Ms D also stated that Mr Rathbone had mentioned that his wife was having difficulties and that she had again offered support but her offer was not taken up by Mr Rathbone. Ms D explained that she had not recorded any discussions which she had with Mr Rathbone about personal issues because those discussions occurred outside personal supervision.

Contact after 29 January 2019

36. Ms D stated in her witness statement that LCC attempted to contact Mr Rathbone both directly and through his trade union representative regarding the concerns about him and the return of items such as his work diary but received no response.

Evidence of Ms C

37. Ms C made a written witness statement dated 20 January 2022 and adopted this as her evidence in chief.
38. In her witness statement, Ms C explained that:
- Mr Rathbone had undertaken a placement in the Assessment Team in LCC's Children's Services whilst a student. After he graduated, he returned to work in that team and, at the time of the events to which the Allegations relate, he was undertaking his assessed and supported year in employment ("**ASYE**").
 - About three months before Mr Rathbone ceased to work for LCC, Ms C became his supervisor. She was therefore Mr Rathbone's supervisor at the time of the events to which the Allegations relate.
39. With regard to the incident where Mr Rathbone left training early, Ms C stated in her witness statement that:
- Neither she nor Ms D were aware that Mr Rathbone had left the training course early until Ms D was advised of this by the training co-ordinator, Ms HL, the day after he had done so.
 - At the request of Ms D, Ms C telephoned Mr Rathbone. On her first attempt, Mr Rathbone answered her call but the call ended immediately afterwards. Ms C called again and Mr Rathbone answered after a while. It sounded to Ms C as though Mr Rathbone was calling from a car but he denied this. When she asked Mr Rathbone about leaving the training early, at first he was silent then he said that he had been contacted by a family support worker (the "**Family Support Worker**"), who, according to Mr Rathbone, had expressed concerns about Service User A and wished him to visit that service user.
 - Ms C asked Mr Rathbone why he had not informed her or Ms D about those concerns and why he did not return to work after the visit but she could not recall Mr Rathbone's responses to those questions; nor could she recall what Mr Rathbone said about the nature of the concerns about Service User A, the time at which he left the training session or the duration of his visit to Service User A. Ms C relayed the details of her conversation with Mr Rathbone to Ms D.
 - Ms C spoke briefly to the Family Support Worker, who stated that she had spoken to Mr Rathbone about Service User A but that there were no safeguarding concerns

which required him to visit Service User A immediately. Ms C relayed then the results of this conversation to Ms D.

- Ms C added that, if an emergency had arisen whilst Mr Rathbone was on a training course, he would have been expected to advise her and Ms D accordingly and ask whether he should leave the course to deal with the situation (although, typically, a duty social worker would be asked to do this.)

40. Ms C also said in her statement that Mr Rathbone, as a newly qualified social worker, was expected to attend fortnightly supervisions sessions with her, as his supervisor, but he had not done so.

41. Ms C had no involvement with Mr Rathbone's portfolio of work. This was dealt with by Ms D as his practice educator.

42. In her oral evidence:

- Ms C stated that Mr Rathbone would have been expected to inform her or Ms D if he intended to leave a training session early or if he intended to visit a service user or work from home. She explained that this was because it was important that managers knew the whereabouts of their team members for health and safety reasons.
- Ms C stated that, when she spoke to Mr Rathbone over the telephone on 23 January 2019, he appeared to be considering his answers to her questions before responding and this made her think that he might not be being truthful about his whereabouts.
- Ms C explained that after her telephone conversations with Mr Rathbone and the Family Support Worker on 23 January 2019, she immediately relayed the contents of those conversations to Ms D, who then mentioned them in an email to the Service Manager.

43. In response to questions from the panel:

- Ms C explained that she did not make a written record of her conversations with Mr Rathbone and the Family Support Worker as those conversations did not occur during supervision (and were therefore not part of the supervision record) and were not relevant to a particular service user (and were therefore not recorded as a case note).
- Ms C stated that, although she did not know Mr Rathbone outside work, she nevertheless had a good working relationship with him, which is why she volunteered to become his supervisor. She had no concerns about his work and she was not aware of any issues in his personal life and none had been mentioned by his previous supervisor.
- Ms C confirmed that she did not hold a learning agreement meeting with Mr Rathbone because, at the time when that meeting would have occurred, she was not his supervisor. She confirmed that he would have been told at that meeting that attendance at ASYE training was mandatory.

- Ms C said that she would not have suggested to Mr Rathbone that he should access files at random as part of his learning activities but would only have referred him to cases which have relevance to the matters which he was dealing with. She added that, in any event files on the Liquid Logic system could not be accessed at random but had to be searched for using an individual's name. However, Ms C did not recall ever speaking to Mr Rathbone about such matters.
- Ms C explained that, although she did not now recall what was said in her conversation of 23 January 2019 with the Family Support Worker, she had immediately relayed the results of that conversation to Ms D, who had recorded them, along with other matters in her email to the Service Manager of 24 January 2019. (Ms C's lack of recollection was partly explained by the passage of time and partly by the fact that she had gone on maternity leave in May 2019.)

Mr Rathbone

44. Mr Rathbone did not attend and give oral evidence, nor did he provide any written submissions for the purposes of this final hearing. However, on 13 October 2020, his solicitors had submitted written representations to Social Work England's case examiners. In addition, in an email to Social Work England dated 4 June 2021, Ms F, a senior manager at Pertemps, social care recruitment agency provided a written reference for Mr Rathbone.

Written representations to Social Work England's case examiners

45. On 13 October 2020, Mr Rathbone's solicitors submitted written representations to the Social Work England's case examiners for the purpose of persuading them that there was no reasonable prospect of adjudicators finding the allegations against Mr Rathbone to be proved.
46. In their written representations, Mr Rathbone's solicitors explained that:
- Whilst Mr Rathbone was on placement in LCC's Children's Services, his relationship with his partner broke down.
 - Mr Rathbone was then working five days a week on his placement at LCC, sometimes until after midnight, whilst also working on Saturday and Sunday to provide for his family. This placed a huge strain on his relationship with his partner.
 - In addition, Mr Rathbone's partner told him that her mental health had deteriorated.
 - As a result, Mr Rathbone moved out and started sleeping in his car outside the family home in order to safeguard his children whilst he attempted to obtain the money for new accommodation for himself and his children.
47. With regard to the allegation that Mr Rathbone had left a mandatory training session early, the written representations provided by Mr Rathbone's solicitors stated that:

- Mr Rathbone accepted that he had left the training session early but claimed that he had not been told that the training was mandatory.
- During the week in which the training took place week, Mr Rathbone had been informed that a child for whom he was undertaking an assessment had died. Mr Rathbone was notified of this in a telephone call from the safeguarding unit. He was not offered any support from his line manager and was simply told that he had to attend a “Sudden Unexplained Death in Children” meeting. His line manager did not even know what this was for. He was also advised to “take a walk to Tesco to clear his head and get some fresh air”.
- During the training Mr Rathbone was asked numerous questions about the child’s death by other attendees and the course leader. Mr Rathbone found this extremely uncomfortable. As Mr Rathbone had previously completed very similar training as part of his degree course, he decided to leave the training after lunch so that he could make a visit.
- Mr Rathbone visited Service User A, the mother of two children to whom he had spoken at their school as a result of the school raising a safeguarding concern about them. A family support worker had advised Mr Rathbone that Service User A was unhappy that he had spoken to her children in school, even though Mr Rathbone had received permission from his team manager, Ms D, to do so.
- Mr Rathbone believed that his visit to Service User A was brief and that she was content when advised that he had not formed the same view as the school. This visit was not a statutory visit, just one to maintain Mr Rathbone’s working relationship with Service User A. Mr Rathbone had made the visit unannounced as Service User A was difficult to contact. Mr Rathbone took a screenshot of his parked car on Apple Maps in the road where Service user A lived so that he could verify where he had been. A copy of this screenshot was in the Mr Rathbone’s evidence bundle.
- After the visit Mr Rathbone intended to go home and complete work on his portfolio as he had been advised the previous week that the students were granted one day off per month to work on this.
- Mr Rathbone had attended numerous ASYE training in which only a small number [of ASYE social workers] had attended. He therefore believed that the training was not mandatory
- Ms C contacted Mr Rathbone at home to ask why he had left the training and he told her his reasons for doing so.

48. With regard to the allegation that Mr Rathbone had submitted a portfolio with forged signatures, in their written submissions, Mr Rathbone’s solicitors stated that:

- When Mr Rathbone was completing his portfolio, he was sleeping in his car, had mounting financial concerns and mounting concerns for the wellbeing of his children.
- Mr Rathbone maintained that he had no recollection of this period due to the stress he was under and lack of support. When Mr Rathbone's manager advised him that she had not signed his portfolio, he emailed his practice supervisor at Hope University to make him aware of this.
- Mr Rathbone was still unsure as to what had happened but accepted that "if his manager stated that she never signed the portfolio then he takes full responsibility and can only apologise".
- Mr Rathbone never had any dishonest intentions and did not wish to minimise the concerns, but "it was a tough time and with no support even after reaching out to the manager and becoming very upset whilst doing so".

49. With regard to the allegation of dishonesty, Mr Rathbone's solicitors stated that:

- Mr Rathbone's relationship with his partner had had broken down, he had moved out of the family home and was living in his car. He also had huge financial concerns and he feared for the wellbeing of his ex-partner and his children. In addition, a child on whom he was undertaking an assessment had died.
- When Mr Rathbone's state of mind was taken into consideration, his actions did not amount to dishonestly but were there "just genuine mistakes". It was clearly evident that Mr Rathbone was not in a fit state, that any failings on his part were not dishonest and that "any reasonable person with the same issues would have acted in the same way". Mr Rathbone had no dishonest intent but was "a man at breaking point and trying to hold things together".

50. With regard to the allegation that Mr Rathbone had accessed a number of case files without appropriate authority, Mr Rathbone's solicitors stated that:

- Mr Rathbone accepted that, whilst working for LCC, he had accessed a significant number of case files, but that was because, on his first day, he had been advised by his supervisor/line manager to look through cases on the system to understand how the system worked and how cases were updated and progressed.
- Mr Rathbone had not been asked to complete the mandatory training for the system as he had been given access previously but at a lower level and he therefore believed that he had the appropriate authority to access files.

Written reference from Ms F

51. In an email to Social Work England dated 4 June 2021, Ms F, a senior manager at Pertemps, a social care recruitment agency, provided a written reference for Mr Rathbone. In that reference, Ms F stated that:

- Mr Rathbone came to Pertemps in March 2019. He was open about his having been dismissed from his role as a newly qualified social worker with LCC, the reasons for his dismissal and the subsequent investigation by the HCPC.
- Mr Rathbone asked that, whilst that investigation was ongoing, Pertemps should only source non-qualified roles for him.
- When finding roles for Mr Rathbone Pertemps made any potential employer made aware of the ongoing investigation.
- On 23 March 2019, Mr Rathbone was appointed to the full-time role of Social Care Advisor at Wirral County Council, the Service Manager having been made fully aware of the ongoing investigation both by Mr Rathbone and by Pertemps. Mr Rathbone remained in that post as at the date of Ms F's reference.
- There had been no negative feedback about Mr Rathbone's work at Wirral County Council.
- Ms F found Mr Rathbone to be honest and hardworking and she had had no issues with him or received any complaints about him.

Finding and reasons on facts

Submissions on behalf of Social Work England

52. Ms Steels submitted that both Ms D and Ms C had given clear, considered and credible evidence, had been clear when they were not able to remember anything and have not sought to embellish their evidence.
53. In relation to Allegation 1(a), Ms Steels referred the panel to the evidence of Ms C and Ms D regarding Mr Rathbone's leaving the ASYE training session on 22 January 2019 at noon rather than remaining until it concluded at 3:00pm. She added that both witnesses confirmed that Mr Rathbone had not informed them of his intention to do this and that Ms D had stated that, in her meeting with Mr Rathbone on 23 January 2019, he had not informed her of the matter retrospectively. Ms Steels also referred the panel to the written representations provided by Mr Rathbone's solicitors to Social Work England's case examiners in which Mr Rathbone accepted that he had left the training session, whilst giving his reasons for doing so. Ms Steels also referred the panel to the evidence of Ms C and Ms D regarding the mandatory nature of the ASYE training sessions and submitted that, given that evidence, it was not credible that Mr Rathbone would not have known that attendance at those training sessions was mandatory.
54. In relation to Allegation 1(b), Ms Steels referred the panel to the evidence of Ms C and Ms D to the effect that Mr Rathbone had stated to each of them that had left the training session on 22 January 2019 early in order to make an urgent visit to Service User A.

55. On the question of whether Mr Rathbone had actually visited Service User A:
- Ms Steels referred the panel to Ms D's evidence about her telephone conversation and meeting with Service User A in which Service User A stated that Mr Rathbone had not visited her since before Christmas 2018.
 - In support of this evidence, Ms Steels submitted that Service User A had spoken highly of Mr Rathbone and therefore had no reason not to be truthful about this matter. She added that, as Ms D spoke to Service User A on 23 and 29 January 2019, it is highly unlikely that she would have forgotten a visit which was said to have occurred on 22 January 2019.
 - Ms Steels also submitted that Mr Rathbone's case note about explaining to Service User A the reason for his visiting her children at school was undermined by Service User A being unaware of the reason when visited by Ms D.
 - Ms Steels further submitted that it was unlikely that Mr Rathbone, as a newly qualified social worker, would visit Service User A if her mental health had deteriorated (as he maintained he had been told by the Family Support Worker) without first advising his manager.
 - In addition, Ms Steels referred the panel to Ms C's evidence to the effect that, during her telephone conversation with Mr Rathbone on 23 January 2019 about his leaving the ASYE training early on the previous day, Mr Rathbone had paused before answering each question "like he was thinking of a response".
 - With regard to the Google Maps screen shot provided by Mr Rathbone, Ms Steels submitted that this only indicated that Mr Rathbone had been in the vicinity of Service User A's home, not that he had actually visited her.
 - Ms Steels then submitted that there was sufficient evidence for the panel to conclude that, contrary to what he had stated to Ms C and Ms D, Mr Rathbone had not visited Service User A on 22 January 2019.
56. With regard to Allegation 1(c), Ms Steels submitted that, if the panel were to find Allegation 1(b) proved in that Mr Rathbone had not visited Service User A on 22 January 2019, then it would follow that his case note of that visit was false.
57. With regard to Allegation 2, Ms Steels referred the panel to Ms D's evidence to the effect that neither her signatures, nor that of the Deputy Service Manager, on Mr Rathbone's portfolio were genuine and that, moreover, neither she nor the Deputy Service manager had had the opportunity to sign the portfolio as Mr Rathbone failed to submit it to them. Ms Steels also referred the panel to the representations made by Mr Rathbone's solicitors to Social Work England's case examiners on this Allegation, which, in effect, accepted Ms D's assertions.
58. With regard to Allegation 3, Ms Steels referred the panel to:

- the results of the audit of the files accessed by Mr Rathbone whilst at LCC, which had been produced in evidence by Ms D and her evidence regarding that audit;
- the evidence of Ms C to reflect that she would not suggest that a social worker should access files random and that, in any event, this was impossible as files would have to be searched for by name; and
- the evidence of Ms C and Ms D regarding the data protection training which Mr Rathbone would have undertaken in order to open an account on the Liquid Logic system and the notice about accessing files which appeared on the login page of that system.

59. With regard to Allegation 4, Ms Steels referred the panel to the test for dishonesty, as set out in the case of Ivey v Genting Casinos [2017] UKSC 67. In relation to the first stage of that test, Ms Steels submitted that, if Mr Rathbone did not visit Service User A on 22 January 2019, then he would be aware that any statements to the contrary were incorrect and that any note of such a visit would be false. Similarly, as, according to Ms D's evidence, she had been repeatedly asking Mr Rathbone for the final version of his portfolio so that she and the Deputy Service Manager could approve and sign it, he would have been well aware that the portfolio had to be physically signed by both of them in the appropriate signature boxes. In relation to the second stage of the test in Ivey v Genting Casinos, Ms Steels submitted that ordinary decent people would consider it dishonest for an employee to tell their manager that they had made a visit which did not take place or to create a false record of such a visit. She added that ordinary decent people would similarly consider it dishonest for a person to submit a portfolio with forged signatures on it notwithstanding that the contents of that document were otherwise true and correct and notwithstanding any domestic pressures which might be affecting them at the time.

Submissions on behalf of Mr Rathbone

60. In making its findings of fact the panel took account of the written representations made by Mr Rathbone's solicitors to Social Work England's case examiners on 13 October 2020 and, in relation to the question of dishonesty, the panel had regard to the written reference from Ms F dated 4 June 2021 and the lack of previous regulatory findings against Mr Rathbone.

Legal Advice

61. The panel accepted the advice of the Legal Adviser on findings of fact. This included reference to Regulation 25(4) of the Social Workers Regulations 2018, rule 32 of Social Work England's Fitness to Practise Rules and the cases of Miller v Minister of Pensions [1947] 2 All ER 372, Ivey v Genting Casinos [2017] UKSC 67, Thorneycroft v NMC [2014] EWHC 1565 (Admin), and Ogudele v NMC [2013] EWHC 2748 (Admin).

Panel's Decision

Allegation 1(a): Between 22 January 2019 and 25 January 2019, whilst working for Liverpool City Council, you left ASYE mandatory training early without informing any manager – FOUND PROVED

62. In relation to Allegation 1(a), the panel was satisfied that Mr Rathbone had left the ASYE training session on 22 January 2019 early given (i) Ms D's evidence that she had been advised of that by the ASYE Co-ordinator; (ii) Ms C's evidence that, in her telephone conversation with Mr Rathbone on 23 January 2019, he had advised her that he had left that training session early in order to visit Service User A as the Family Support Worker had informed him that Service User A's mental-health had deteriorated, (iii) Ms D's evidence that Mr Rathbone had provided a similar explanation to her and the Service Manager when they met him on 28 January 2019; and the statement in the representations made by Mr Rathbone's solicitors to Social Work England's case examiners on 13 October 2020, to the effect that Mr Rathbone had left the training session on 22 January 2019.
63. The panel were also satisfied that Mr Rathbone had not informed any manager of his intention to leave the training session given that:
- Both Ms C (Mr Rathbone's supervisor) and Ms D (Mr Rathbone's team manager) stated in their evidence that Mr Rathbone had not informed either of them of his intention to leave the training session early.
 - Ms D, in her evidence, had stated that she had received an email from the ASYE Coordinator on 23 January 2019 asking why Mr Rathbone had left the training session early, thus indicating that Mr Rathbone had not informed the ASYE Co-ordinator of his intention to leave the session early.
 - Ms D had also stated that she had met with Mr Rathbone before receiving that email and he had not mentioned his leaving training session early on the previous day.
 - The representations made by Mr Rathbone solicitors to Social Work England's case examiners in October 2020 made no mention of Mr Rathbone's informing any manager of his intention to leave the training session on 22 January 2019 early.
64. The panel were also satisfied that the ASYE training sessions were mandatory for social workers at LCC who, like Mr Rathbone, were in their ASYE. The panel's reasons for that conclusion were as follows:
- In their evidence, both Ms C and Ms D referred to the learning agreement meeting at which Mr Rathbone, like other social workers at LCC who were in their ASYE, would have informed of the training programme and of the need for them to attend it. Although neither Ms C nor Ms D had been present at Mr Rathbone's learning agreement meeting, the panel were, on the basis of their evidence, satisfied that such a meeting would have occurred and that at that meeting Mr Rathbone would have been advised that attendance at ASYE training was mandatory unless his manager had

agreed that it was more important for him to attend another appointment, such as a case conference or court hearing.

- In any event, the panel considered that it would be the responsibility of any social worker in their ASYE year to attend the training which had been arranged for them as part of their employer's ASYE programme. The panel also considered that, as such training was intended to give newly qualified social workers the knowledge and skills necessary to enable them to work competently and effectively, it would be odd if attendance at that training were optional.

65. For the same reasons, the panel was satisfied that Mr Rathbone would have been aware of the mandatory nature of the ASYE training sessions.
66. Given the above conclusions, the panel found Allegation 1(a) to be proved.

Allegation 1(b): Between 22 January 2019 and 25 January 2019, whilst working for Liverpool City Council, you told your manager the reason you left the ASYE mandatory training early was because you had been to visit Service User A, which was untrue – FOUND PROVED

67. In relation to Allegation 1(b), the panel was satisfied that Mr Rathbone had told his manager that he had left the ASYE training session on 22 January 2019 early because he had to visit Service User A. In coming to this conclusion the panel relied on (i) the evidence of Ms C, who had stated that, when she spoke to Mr Rathbone on 23 January 2019, he told her that he had visited Service User A on the afternoon of 22 January 2019 after the Family Support Worker had raised concerns about her and (ii) the evidence of Ms D, who stated that, when she and the Service Manager met with Mr Rathbone on 28 January 2019, he stated that he had left the training session on 22 January 2019 and visited Service User A. In addition, the representations made by Mr Rathbone's solicitors to Social Work England's case examiners in October 2020 also stated that Mr Rathbone had left the training session in order to make that visit.
68. The panel was also satisfied that, on the balance of probabilities, Mr Rathbone had not visited Service User A on 22 January 2019. The panel's reasons for that conclusion were as follows:
 - In her evidence, Ms D had stated that she and the Service Manager at LCC had visited Service User A at home on 29 January 2019 and that, during that visit, Service User A had said that Mr Rathbone had not visited her since before Christmas 2018, when he brought presents for her children.
 - Ms D had also stated that Service User A had mentioned that she was pleased with Mr Rathbone as her social worker. It therefore appeared to the panel that Service User A had no reason not to be truthful regarding the question of whether Mr Rathbone visited her on 22 January 2019.
 - Given that Ms D spoke to Service User A over the telephone on 23 January 2019 and visited her at home on 29 January 2019, the panel considered it unlikely that Service

User A would not have remembered a visit from Mr Rathbone on 22 January 2019, if that visit had occurred. This appeared to the panel to reflect a detailed recollection on the part of Service User A and added credibility to Mr D's account of her visit to Service User A.

- According to Mr Rathbone's case note of the visit which he said he had made to Service User A on 22 January 2019, Mr Rathbone had advised Service User A of the reasons why he had visited her children at school. However, according to Ms D's evidence of her visit to Service User A on 29 January 2019, Service User A was unaware of those reasons. The panel considered that this indicated that Mr Rathbone's visit on 22 January 2019 may not have occurred and that his note of that visit was a fabrication.
- The panel accepted the evidence of Ms D and Ms C that a social worker in their ASYE, like Mr Rathbone, would have spoken to their supervisor or manager before making a visit to a service user whose mental health had reportedly deteriorated (as Mr Rathbone had claimed was the case with Service User A).
- The panel noted the screenshot from Apple Maps which Mr Rathbone had provided. However, the panel considered that, at best, this proved that Mr Rathbone's phone (and, most probably, Mr Rathbone) was in the vicinity of Service User A's home on 22 January 2019 but it did not prove that he had actually met with her.

69. Given the above conclusions, the panel found Allegation 1(b) to be proved.

Allegation 1(c): Between 22 January 2019 and 25 January 2019, whilst working for Liverpool City Council, you created a false record of the visit to Service User A – FOUND PROVED

70. In relation to Allegation 1(c):

- The panel noted that, as part of her evidence, Ms D had produced a screenshot of an entry in the case file for Service User A's family which was expressed to be made by Mr Rathbone and which recorded the details of a visit which he purported to have made to Service User A on 22 January 2019. Given the details on that screenshot and the evidence of Ms D, the panel accepted that that entry had been made by Mr Rathbone.
- The panel considered that, as it had concluded that, on the balance of probabilities, Mr Rathbone not visited Service User A on 22 January 2019, it followed that that case note was a false record.
- In addition, the panel also noted Ms D's evidence that, when she visited Service User A on 29 January 2019, Service User A was unaware of the reason for Mr Rathbone's visiting children whilst they were at school. This indicated to the panel that, contrary to the contents of Mr Rathbone's case note of his purported visit to Service User A on 22 January 2019, he had not explained that reason to Service User A. This, in turn, gave the panel further reason to conclude that the visit had not occurred.
- Given those conclusions, the panel found Allegation 1(c) to be proved.

Allegation 2: Whilst working for Liverpool City Council, you submitted a Portfolio to Hope University as part of your Social Work Degree which contained forged signatures – FOUND PROVED

71. The panel was satisfied that Allegation 2 had been proved for the following reasons:
- Ms D, in her evidence, had stated that she had obtained from Hope University a copy of the version of Mr Rathbone's portfolio which he had submitted to Hope University and a copy of that document was exhibited to her witness statement.
 - The panel noted from that document that it contained 14 signatures or initials which purported to be those of Ms D as Mr Rathbone's Practice Educator and one signature which purported to be that of the Deputy Service Manager.
 - Ms D had confirmed that none of the signatures or initials which purported to be hers were in fact hers. She also confirmed that she knew the Deputy Service Manager's signature and could confirm that the signature on Mr Rathbone's portfolio which purported to be that of the Deputy Service Manager was not the Deputy Service Manager's actual signature. As evidence of this, Ms D had produced in evidence specimens of her signature and that of the Deputy Service Manager.
 - Ms D also stated that, when Ms D had shown Mr Rathbone's portfolio to the Deputy Service Manager, she had confirmed that the signature on Mr Rathbone's portfolio purported to be that of the Deputy Service Manager was not actually hers.
 - In addition, Ms D had stated that neither she nor the Deputy Service Manager had had the opportunity to sign Mr Rathbone's portfolio as, despite Ms D making repeated requests, to Mr Rathbone, he had never provided her with the final version of his portfolio so that she and the Deputy Service Manager could review and sign it.
 - Mr Rathbone's solicitors in their representations to Social Work England's case examiners had stated that Mr Rathbone maintained that he had no recollection of this matter due to the stress he was under and lack of support and that, although Mr Rathbone was unsure as to what had happened, he accepted that "if his manager stated that she never signed the portfolio then he takes full responsibility and can only apologise".

Allegation 3: Whilst working for Liverpool City Council, you accessed one or more case files without the appropriate authority to do so

72. in relation to the case files accessed by Mr Rathbone whilst he worked at LCC, the panel noted that:
- Ms D had produced in evidence a report detailing the results of an audit of the files which had been accessed by Mr Rathbone whilst working at LCC.

- Ms D had marked all of the files on that report which were not open to her team (of which Mr Rathbone was a member whilst he worked at LCC). There were over 125 such files.
- Mr Rathbone's solicitors, in their representations to Social Work England's case examiners, had stated that Mr Rathbone accepted that, whilst working for LCC, he had accessed a significant number of case files.
- Ms D stated that, when a social worker was working on a case file, they typically access that file about 70 times. However, the files which Mr Rathbone had accessed which were not open to his team and had been accessed only one or twice.
- Both Ms D and Ms explained that it was not possible to access files at random as files had to be searched for by name. Ms D therefore considered that, when accessing files which were not open to his team, he could have been searching for files of persons known to him.

73. As to the question of whether Mr Rathbone had authority to access case files which were not open to his team, the panel noted that:

- In their representations to Social Work England's case examiners Mr Rathbone's solicitors had stated that Mr Rathbone had been given access to the LCC's system previously but at a lower level [than a qualified social worker] and he therefore believed that he had the appropriate authority to access files.
- However, Ms D, in her evidence, had explained that, in order to access files on the LCC's Liquid Logic system, employees had to have a Liquid Logic account and, in order to open such an account, an employee had to undertake on-line training on LCC's data protection policy. Ms D produced a copy of that policy, which, under the heading Business Use stated, "Ensure you only access records that relate to a particular piece of work you are undertaking and don't access any information that relates to a person known to you." Ms D confirmed that this training the same for all employees whatever their level of seniority. Ms D also explained that the login page of the Liquid Logic system displayed a warning to employees about accessing files, which stated that users of the system must only access service users' confidential information if they had a legitimate operational reason to do so and should never access information linked to a person known to them.
- Mr Rathbone's solicitors had also stated in their representations that Mr Rathbone had, on his first day, been advised by his supervisor or line manager to look through cases on the system to understand how the system worked and how cases were updated and progressed. However, Ms C had stated in her evidence that she would never ask an ASYE social worker to browse files at random but would recommend specific files which were relevant to an issue on which they were working. Similarly, Ms D had stated in her evidence that Mr Rathbone would only be expected to look at files which were open to his team. Both Ms C and Ms D were clear that files on the

Liquid Logic system could not be accessed at random but had to be searched for by name.

74. Given the evidence mentioned above, the panel concluded that, whilst working at LCC, Mr Rathbone had accessed a significant number of files which, in breach of LCC's stated policy, he had no legitimate reason to access and which, again in breach of LCC's policy, were probably files of individual who were, or were connected with, persons known to him. Given Ms D's explanation about the training required in order to open a Liquid Logic account and the warning on the Liquid Logic log-in page, the panel considered that Mr Rathbone would have been aware that he was not authorised to access such files. Accordingly, the panel were satisfied that Allegation 3 had been proved.

Allegation 4: Your actions at 1.b), 1.c) and 2 were dishonest

75. With regard to Mr Rathbone's actions as set out in Allegations 1(b) and 1(c):
- As the panel had concluded that Mr Rathbone had not visited Service User A on 22 January 2019, it also concluded that he would have been well aware that he did not make the visit and that it would be untrue for him to state to Ms C (supervisor) and Ms D (his team manager) that he had made that visit. Similarly, Mr Rathbone will also be well aware that any note which he might create which purported to describe that visit would be a false record.
 - The panel considered that ordinary decent members of the public would consider it dishonest for Mr Rathbone to inform his supervisor or any of his managers that he had made a visit which did not actually occur or to create a false record of such visit.
 - The panel therefore concluded that Mr Rathbone's actions as set out in Allegations 1(b) and 1(c) were dishonest according to the test in Ivey v Genting Casinos.
76. With regard to Mr Rathbone's actions as set out in Allegation 2:
- The panel considered that Mr Rathbone would have been well aware that his portfolio had to be reviewed and signed at several places by Ms D, as his Practice Educator, and, in one instance, by the Deputy Service Manager given both the wording of the form on which his portfolio had been created and given that Ms D had repeatedly asked him to let her have his portfolio so that she and the Deputy Service Manager could review and sign it. The panel also considered that Mr Rathbone would have been well aware that Ms D and the Deputy Service Manager could not have signed his portfolio because he had not submitted it to them for their review and signature.
 - The panel considered that ordinary decent people would regard submitting a portfolio with forged signatures as being dishonest, even if the contents of that document were true and correct.
 - The panel therefore concluded that Mr Rathbone's actions as set out in Allegations 1(b) and 1(c) were dishonest according to the test in Ivey v Genting Casinos.

77. The panel noted that, in their representations to Social Work England's case examiners, Mr Rathbone solicitors had stated that Mr Rathbone's relationship with his partner had broken down, he had moved out of the family home and was living in his car and he had huge financial concerns and he feared for the wellbeing of his ex-partner and his children. They added that a child on whom Mr Rathbone was undertaking an assessment had died. Mr Rathbone's solicitors went on to argue that, when Mr Rathbone's state of mind was taken into consideration, his actions did not amount to dishonestly but were "just genuine mistakes" and that, as he was "not in a fit state", any failings on his part were not dishonest and that "any reasonable person with the same issues would have acted in the same way". They stated that Mr Rathbone had no dishonest intent but was "a man at breaking point and trying to hold things together".
78. However, the panel were not persuaded by that argument. In the first instance, the panel noted that no evidence had been adduced to support Mr Rathbone's solicitors' contentions regarding his mental and emotional state. On the contrary, both Ms D and Ms C had stated that Mr Rathbone had not disclosed any personal or domestic issues to them ([PRIVATE]) and Ms D had stated that he had indicated that he had not been adversely affected by the death of the child which he was assessing. Secondly, the panel considered that the domestic and personal issues mentioned by Mr Rathbone solicitors would not have affected his understanding that it was wrong for him to submit a portfolio with forged signatures or to advise his supervisor and manager that he had made a visit which had not actually occurred or to create a record in respect of that visit. Similarly, the panel did not consider that ordinary decent people would think that domestic pressures or stressful incidents at work would be a reasonable excuse for lying about a visit, creating a false record or submitting a portfolio with forged signatures or make those acts any less dishonest. In particular, the panel did not consider that ordinary decent people would consider Mr Rathbone's actions as described in Allegations 1(b), 1(c) and 2 as to be "genuine mistakes" but rather they would regard them as deliberate acts.
79. For the reasons given above, the panel concluded that Allegation 4 had been proved.

Finding and reasons on grounds

Submissions on behalf of Social Work England

80. After referring the panel to the definition of misconduct in cases such as Roylance v GMC (No.2) [2000] 1AC, Ms Steels submitted that Mr Rathbone's conduct fell far short of the standards expected of him and failed to meet the requirements of his role as a social worker, including the requirement to be open and honest; to act ethically and transparently; to keep true and accurate records; and to act appropriately in accessing service users' data.

81. Ms Steels then submitted that Mr Rathbone's conduct breached the following standards from the HCPC's Standards of Conduct, Performance and Ethics:

Standard 3: "Work within the limits of your knowledge and skills"

3.3 You must keep your knowledge and skills up to date and relevant to your scope of practice through continuing professional development.

Standard 9: "Be honest and trustworthy"

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

Standard 10: "Keep records of your work"

10.1 You must keep full, clear, and accurate records for everyone you care for, treat, or provide other services to.

10.3 You must keep records secure by protecting them from loss, damage or inappropriate access.

82. In relation to Allegation 1(a), Ms Steels submitted that Mr Rathbone had left a training session early and this was made more serious by that training being mandatory. She added that not only did this mean that Mr Rathbone may have missed a fundamental piece of training but also it posed a health and safety risk, as Mr Rathbone's managers did not know his whereabouts.
83. In relation to Allegations 1(b) and 1(c), Ms Steels stated that Mr Rathbone had told his managers that he had visited Service User A when he had not done so and that he had then gone on to create a false case note of that visit. Ms Steels submitted that this latter act was serious in that false records could affect his colleagues' assessment of risk within the relevant family. She also submitted that, as the reason which Mr Rathbone gave to Ms C and Ms D for his purported visit to Service User A differed from the contents of his case note of that visit, he had created a conflict of information within LCC's Children's Services regarding Service User A. Ms Steels added that, as stated by Ms D, Mr Rathbone's actions in this regard would call LCC's reputation into question.
84. With regard to Allegation 2, Ms Steels stated that Mr Rathbone had submitted to his university a portfolio which was littered with forged signatures, even though they must have been obvious to him. She added that, by so doing, he had deprived his managers of the opportunity of reviewing and signing off his portfolio, as required by his university.
85. Ms Steels then submitted that Mr Rathbone's accessing of case files without authority was serious bearing in mind the number of files accessed and that social workers were trusted to treat sensitive personal information relating to service users with respect and not to access it without a legitimate professional reason.
86. Ms Steels concluded by reminding the panel that it had found that Mr Rathbone's actions under Allegations 1(b), 1(c) and 2 were dishonest and that dishonesty was a serious matter

as social workers were trusted with access to the homes and personal data of vulnerable service users.

Submissions on behalf of Mr Rathbone

87. In their submissions to Social Work England's case examiners in 2020, Mr Rathbone's solicitors stated, "where failings [on Mr Rathbone's part] have been identified, these are not to such a degree as to justify a finding of misconduct" and Mr Rathbone "has not said or done anything which is 'deplorable'". However, Mr Rathbone's solicitors did not give any reasons for those conclusions and, as can be seen from the decision below, the panel, for the most part, disagreed with them. No other submissions were received from Mr Rathbone or his representatives immediately prior to, or during, this hearing.

Legal Advice on grounds

88. The panel accepted the advice of the Legal Adviser on grounds This included reference to the cases of Roylance v GMC (No.2) [2000] 1AC, Meadow v GMC [2006] EWCA Civ 1390, [2007] QB 462, R (Remedy UK Ltd) v GMC [2010] EWHC 1245, Khan v BSB [2018] EWHC 2184(Admin), Johnson and Maqqs v NMC (No.2) [2013] EWHC 2140, Nandi v General Medical Council [2004] EWHC 231 and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34.

Panel's decision on grounds

89. Having found all of the Allegations proved, the panel considered each of the proven Allegations 1, 2 and 3 in turn in order to determine whether Mr Rathbone's conduct, as described in those Allegations, amounted to misconduct. In doing so, the panel bore in mind that it had found that Mr Rathbone's actions described in Allegations 1(b), 1(c) and 2 were dishonest.

Allegation 1(a)

90. In relation to Allegation 1(a), the panel had found the Mr Rathbone attended an ASYE training session in the morning but had left at noon rather than remaining for the full session, which was due to end at 3:00pm. As a result, after allowing for lunch, Mr Rathbone had missed two hours of mandatory training. In the panel's judgement this single incident was not sufficiently serious to amount to misconduct, even after taking account of the training's mandatory nature.

Allegations 1(b) and 1(c)

91. The panel noted that Allegations 1(b) and 1(c) involved three instances of dishonesty on the part of Mr Rathbone, namely, telling Ms C that he had visited Service User A when this was not the case; repeating this to Ms D when he met with her on 24 January 2019; and creating a false record of that visit.
92. The panel considered that honesty and integrity were fundamental to all professions and therefore Mr Rathbone's dishonest conduct, as described in Allegations 1(b) and 1(c),

breached a fundamental tenet of the social work profession. In addition, the panel considered that it also breached Standard 9 (and, in particular, paragraph 9.1) of the HCPC Standards of Conduct, Performance and Ethics.

93. In addition, the panel considered that Mr Rathbone's creation of a false record of his purported visit to Service User A was a serious departure from the requirement of paragraph 10.1 of the HCPC Standards of Conduct, Performance and Ethics to keep accurate records. The panel also considered that the consequences of creating such a false record could be serious in that they could have adversely affected the ability of Mr Rathbone's colleagues to properly assess any potential risk or safeguarding issues for Service User A and her children.
94. In the circumstances, the panel considered that Mr Rathbone's actions as described in Allegations 1(b) and 1(c) were both individually and collectively sufficiently serious to amount to misconduct.

Allegation 2

95. With regard to Allegation 2, the panel had found that Mr Rathbone had dishonestly submitted a portfolio to his university which contained fifteen forged signatures or initials of his Practice Educator and LCC's Deputy Service Manager. The panel considered that Mr Rathbone would have been well aware of the presence of the signatures and also of the fact that neither his Practice Educator nor the Deputy Service Manager could have signed his portfolio as he had not submitted it for their approval and signature. The panel also noted that the University required his portfolio to be signed by his Practice Educator and by the Deputy Service Manager in order to confirm that its contents were true and correct as the University would base part of its assessment of Mr Rathbone's capability on the contents of his portfolio.
96. Again, the panel took the view that Mr Rathbone's submission of his portfolio with forged signatures was sufficiently serious to amount to misconduct given that it involved dishonesty and a breach of Standard 9 of the HCPC Standards of Conduct, Performance and Ethics.

Allegation 3

97. The panel considered that Mr Rathbone's misconduct, as described in Allegation 3, amounted to misconduct as it was both serious and would be considered deplorable by fellow social workers. This was because that misconduct involved a flagrant and repeated disregard for LCC's data protection policy and a flagrant and repeated lack of respect for the privacy of the service users whose files he had accessed. Mr Rathbone's failure to respect the privacy of service users also breached paragraph 1.1 of the HCPC Standards of Conduct, Performance and Ethics (*You must treat service users and carers as individuals, respecting their privacy and dignity*). The seriousness of this matter was exacerbated by the fact that Mr Rathbone accessed over 125 case files without any legitimate professional reason to do so.

Finding and reasons on current impairment

Submissions on behalf of Social Work England

98. Referring the panel to the test for impairment set out by the court in the case of *Council for Healthcare Regulatory Excellence v Grant and Nursing and Midwifery Council [2011] EWHC 927 (Admin)*, Ms Steels submitted that, in the present instance, all four limbs of that test were engaged.
99. Ms Steels then referred the panel to the factors to be considered when assessing impairment as set out in *Cohen v General Medical Council [2008] EWHC 581 (Admin)*. Ms Steels then submitted that:
- Mr Rathbone's misconduct was difficult to remedy as it involved dishonesty and attitudinal issues and did not relate to isolated incidents.
 - Mr Rathbone had not undertaken any training or other remediation.
 - The risk of Mr Rathbone's misconduct being repeated was high for several reasons. Mr Rathbone had made only limited admissions and had sought to minimise or justify his conduct, in particular by references to his personal situation, his inability to recall events at the time he submitted his portfolio and a lack of support at LCC (which was contradicted by Ms D's evidence). Not only had he not undertaken any remediation but he had also not shown any remorse, engaged in any reflection or demonstrated any insight into his misconduct or its potential impact on service users or the social work profession. Furthermore, he had not put forward any plan or strategy for ensuring that his misconduct would not be repeated, if he were to face personal difficulties in the future. Those factors far outweighed the previous lack of regulatory findings against Mr Rathbone and the positive reference provided by his employment agency.
100. With regard to the public component of impairment, Ms Steels submitted that, given the seriousness of his misconduct and that it included dishonesty, public confidence in the social work profession would be undermined if no finding of impairment were made in respect of Mr Rathbone. She added that it is the role of Social Work England to ensure that proper professional standards for social workers are upheld and it would be failing in that role, if no finding of impairment were made in the present case.

Representations on behalf of Mr Rathbone

101. Although Mr Rathbone had not provided any written submissions for the purpose of this final hearing, the panel had regard to the submissions on impairment contained in the representations made by his solicitors to Social Work England's case examiners in October 2020.
102. Mr Rathbone's solicitors had informed the case examiners that Mr Rathbone was working at Wirral Integrated Front Door and was working well. They added that his role included advising professionals and members of the public regarding safeguarding issues and support services

and that he also inputs data and referrals onto the system. They also pointed out that Mr Rathbone had received excellent feedback from his line manager. In that latter regard, the panel also had regard to the reference provided by the senior manager to the agency used by Mr Rathbone, the details of which were set out earlier in this decision.

103. Mr Rathbone's solicitors submitted that Mr Rathbone did not pose a risk to members of the public and that his fitness to practise was not impaired. In support of that submission:
- Mr Rathbone's solicitors informed the panel that there had not been any repetition of Mr Rathbone's behaviour and Mr Rathbone did not access any case which is not his own without permission.
 - With regard to insight, Mr Rathbone's solicitors stated "[Mr Rathbone] has Insight and can understand how his behaviour and actions gave rise to these concerns. He does not wish to paint himself as a victim of his personal situation and he has learned a lot from it and understand[s] that support and talking to line management is of the utmost importance."
 - With regard to remediation and the risk of repetition, Mr Rathbone's solicitors submitted that any failing on Mr Rathbone's part was easily remediable as the conduct on the part of Mr Rathbone described in the Allegations had occurred "solely and wholly due to his personal situation" (which Mr Rathbone's solicitors described as "the root cause"). They went on to say that Mr Rathbone's personal situation was "sorted" and he is now in a job that is secure and he has support around him the conduct falls away. They then added "so the failings are easily remediable" and assured the case examiner that they could "be confident that these concerns will not be raised again".
 - Mr Rathbone's solicitors therefore concluded that "[Mr Rathbone's] fitness to practise is not impaired as the sole source of the misconduct has been eradicated and this has been demonstrated through [Mr Rathbone's] employment".
104. On the question of whether Mr Rathbone's fitness to practise was impaired in terms of the need to maintain public confidence, Mr Rathbone's solicitors invited the case examiners to "remember that sometimes people do have a lapse in behaviour and that the public confidence would not be enhanced by the HCPC creating a 'fear culture' which would lead registrants to believe that every minor error or isolated lapse will result in an allegation being pursued against them".
105. Mr Rathbone's solicitors also informed the case examiners that "[Mr Rathbone] has worked hard to have a career and the thought that potentially it will be lost before he has really even begun his career terrifies him and this investigation has reaffirmed to him his real priorities."

Legal Advice

106. The panel accepted the advice of the Legal Adviser on impairment. This included reference to Social Work England's Sanctions Guidance and the cases of Council for the Regulation of

Health Care Professionals v General Medical Council and Biswas [2006] EWHC 464, Council for Healthcare Regulatory Excellence v Grant and Nursing and Midwifery Council [2011] EWHC 927 (Admin), Meadow v General Medical Council [2006] EWCA Civ 1390, [2007] QB 462, Cohen v General Medical Council [2008] EWHC 581 (Admin), Ige v NMC [2011] EWHC 3721, Professional Standards Authority v Health and Care Professions Council and Ghaffar [2014] EWHC 2723 (Admin), Professional Standards Authority for Health and Social Care v General Medical Council and Uppal [2015] EWHC 1304 (Admin) and Professional Standards Authority v Nursing and Midwifery Council and M.

Panel's Decision

107. The panel first considered the personal component of impairment. In so doing, the panel first considered whether Mr Rathbone's misconduct had been such as to pose a risk to the health, safety and well-being of the public (for the purpose of Social Work England's overarching objective) or to put service users at unwarranted risk of harm (for the purposes of the first limb of the test in CHRE v Grant). Following the steps in Cohen v GMC, the panel then considered whether Mr Rathbone's conduct was easily remediable, whether it had been remedied and whether it was highly unlikely to be repeated.
108. In relation to the first of those issues, the panel concluded that Mr Rathbone's misconduct had indeed posed a risk to the health, safety and well-being of the public and put service users at unwarranted risk of harm. This was because, by creating a record of a visit to a service user which did not occur, Mr Rathbone put the service user and her family at risk of harm as that false record could have had an adverse impact on case progression and on his colleagues' assessment of the potential risks or safeguarding issues for the service user and her children. In addition, although service users would be unlikely to suffer physical harm if they were to learn that a social worker had been accessing the information in their case files without any professional reason, it was nevertheless possible that they might suffer some degree of anxiety or distress.
109. The panel next considered whether Mr Rathbone's conduct was remediable. In this regard, the panel noted that his misconduct, as described in Allegations 1(b), 1(c) and 2, involved dishonesty. It also noted that his misconduct in accessing over 125 case files without a legitimate professional reason involved a repeated and flagrant disregard of LCC's data protection policy and of the privacy of service user information. The panel therefore took the view that remediation would be difficult as his misconduct was, by its nature, attitudinal and behavioural. Accordingly, the panel concluded that, although remediation would be possible, it would require Mr Rathbone to develop significant insight into his conduct and a deep understanding of its causes and to undertake thorough and structured remedial activity.
110. However, when the panel moved on to consider whether, and what extent, Mr Rathbone's misconduct had actually been remedied, it could find no evidence of his having undertaken any training or reflection, produced any reflective pieces or engaged in any other remedial activity.

111. The panel then considered whether it was highly unlikely that Mr Rathbone's misconduct would be repeated and concluded that the risk of repetition was high. The panel's reasons for arriving at that conclusion were as follows:

- The panel had seen no evidence of Mr Rathbone expressing any remorse for his misconduct or its potential effects except for a brief apology, via his solicitors representations to the case examiners, for submitting his portfolio with forged signatures.
- Similarly, the panel had no evidence of Mr Rathbone having undertaken any reflection or having developed any insight into his misconduct, its causes or its potential effects on service users, colleagues, the social work profession or the public perception of social workers. On the contrary, he appeared to have attributed his misconduct entirely to his personal situation at the time when that misconduct occurred. Similarly, whilst Mr Rathbone was fully entitled to maintain his defence, he nevertheless failed to acknowledge the seriousness of the concerns raised by LCC and his regulator. Nor did he take responsibility for those actions which he did accept (namely, the submission of a portfolio with forged signatures) by acknowledging what he did and that it was wrong. Moreover, despite his purported concern about losing his career before it had begun, Mr Rathbone had shown only limited interest in participating in the fitness to practice proceedings against him. In particular, he had failed to attend this hearing or to make written submissions to the panel containing up to date information about his situation.
- The panel had received no evidence of Mr Rathbone undertaking any relevant training (such as in data protection), producing any reflective pieces or engaging in any other remedial activity. Likewise, although Mr Rathbone had attributed his misconduct to difficulties in his personal life, there was no evidence of his having developed any strategies to avoid a repetition of his misconduct should similar difficulties arise in the future.
- Accordingly, given Mr Rathbone's lack of remorse, insight and remediation coupled with the difficulty of remedying behavioural issues such as dishonesty, the panel concluded that risk of his misconduct being repeated was high.

112. The high risk of Mr Rathbone's misconduct being repeated led the panel to conclude that, without some form of restriction on his practice, Mr Rathbone would continue to pose a risk to service users. Accordingly, the panel decided that Mr Rathbone's fitness to practise was currently impaired in terms of the need to protect the health, safety and well-being of the public.

113. In arriving at the above conclusions, the panel took account of (i) the absence of previous regulatory findings against Mr Rathbone; (ii) the fact that, since January 2019, there had been no allegations that his misconduct had been repeated or that any other regulatory concerns had arisen; (iii) the positive reference from his employment agency; and (iv) the representations from his solicitors in October 2020 regarding his performance in his then

current employment. However, the panel considered that those matters were outweighed by the complete absence of any evidence of Mr Rathbone undertaking any remediation or demonstrating any insight into, or taking any personal responsibility for, his misconduct or its potential effects on service users or the social work profession.

114. The panel also took account of the representations regarding impairment which had been made by Mr Rathbone's solicitors to Social Work England's case examiners in October 2020. Those representations were to the effect that Mr Rathbone's actions had occurred "solely and wholly due to his personal situation" at the time and that, as that situation had been resolved and he was working in a supportive environment, there was no longer any risk of his misconduct being repeated. However, the panel considered that this argument was not tenable. In the first instance, it ignored the fact that Mr Rathbone's misconduct comprised deliberate and repeated acts on his part, including making untruthful statements to his managers about his purported visit to Service User A, making a false case note of that visit, submitting a portfolio with fifteen forged signatures or initials on it and accessing case files without authority (and despite a clear warning on the Liquid Logic login page) on over 125 occasions. Secondly, given that Mr Rathbone's misconduct was the product of his own actions, the panel considered that it could only be fully and effectively remedied by Mr Rathbone acknowledging his misconduct, developing insight into its causes, undertaking remediation and having strategies to prevent his misconduct occurring in the future, should further difficulties arise in his personal life. (The panel would also add that, given the evidence of Ms D and Ms C, it did not accept that LCC's Children's Services did not have a supportive work environment.)
115. The panel next considered the public component of impairment. In this regard:
- The panel considered that Mr Rathbone's misconduct, as it involved several instances of dishonesty and accessing service user files without authority on numerous occasions, had brought the social work profession into disrepute for the purposes of the second limb of the test in CHRE v Grant and that informed and reasonable members of the public with an understanding of the present case would be very concerned if they were to learn that, having committed those acts, Mr Rathbone had been allowed to practise without any form of restriction.
 - Similarly, the panel considered that Mr Rathbone's dishonesty and complete disregard for the privacy of service users' information breached fundamental tenets of the social work profession for the purposes of the third limb of the test in CHRE v Grant and that professional standards for social workers would be undermined if he were allowed to practice without restriction.
 - For the above reasons, the panel considered that Mr Rathbone's fitness to practise was impaired in that some form of restriction on his practice was required in order to maintain public confidence in social workers and proper professional standards.

Decision on sanction

Submissions on behalf of Social Work England

116. Having referred the panel to Social Work England's overarching objective of protection of the public (as defined in s.37(2) of the Children and Social Work Act 2017), Social Work England's Sanctions Guidance and the cases of *Ghosh v General Medical Council [2001] UKPC 29* and *Bolton v Law Society [1994] 1 WLR 512, CA*, Ms Steels requested the panel to make an order removing Mr Rathbone's entry from Social Work England's register.
117. Ms Steels submitted that a removal order was appropriate and proportionate in the present case for the following reasons:
- Although there was no evidence Mr Rathbone's misconduct had caused any actual harm, his creation of a false record on a visit to Service User A had nevertheless created a risk of harm for her and her children. Similarly, his accessing of case files without authority could have caused distress to the service users concerned and would, in any event cause a loss of confidence in social workers.
 - There was a high risk of Mr Rathbone's misconduct being repeated. His misconduct was not easily remediable and there was no evidence of any remediation, reflection or insight on his part. He had also failed to take responsibility for his actions and to recognise the damage which his misconduct could cause to the public's trust in social workers.
 - Mr Rathbone's misconduct had occurred in several areas of his practice and had involved deliberate acts of dishonesty and the accessing of service user information without legitimate reason on multiple occasions. In the circumstances, only a removal order would be sufficient to maintain public confidence and proper professional standards.
118. Ms Steels also submitted that the other sanctions available to the panel would not be appropriate or proportionate because:
- Given the seriousness of Mr Rathbone's misconduct and the risk of its being repeated, giving advice or making a warning order would not be sufficient to protect the public or to maintain public confidence and professional standards.
 - A conditions of practice order would be neither practicable nor appropriate as Mr Rathbone's misconduct related to several different areas of his practice and resulted from attitudinal failings rather than any lack of knowledge or training. (In this regard, Ms Steels referred the panel to paragraph 84 of Social Work England's Sanctions Guidance.)
 - Given the nature and seriousness of Mr Rathbone's misconduct, his failure to properly engage with the fitness to practice process and his lack of insight and remediation, a

suspension order would not be adequate to maintain public confidence and proper professional standards.

Legal Advice on Sanction

119. The panel accepted the advice of the Legal Adviser on sanction. This included reference to paragraphs 12 and 13 of Schedule 2 to the Social Workers Regulations 2018, Social Work England's Sanctions Guidance and the cases of *Bolton v Law Society [1994] 1 WLR 512*, *Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin)*, *R (Farah) v General Medical Council [2008] EWHC 731*, *Atkinson v General Medical Council [2009] EWHC 3636*, *Hassan v General Optical Council [2013] EWHC 1887 (Admin)* and *General Medical Council v Chaudhary [2017] EWHC 2561*.

Panel's Decision on Sanction

120. In arriving at its decision on sanction the panel was mindful that:
- In determining the sanction which it should impose on Mr Rathbone, the panel should not seek to punish him for his misconduct but to achieve Social Work England's overarching objective of "protection of the public".
 - As defined in s.37(2) of the Children and Social Work Act 2017, that concept comprises protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in social workers; and promoting and maintaining proper professional standards for social workers.
 - Any sanction imposed by the panel on Mr Rathbone must be proportionate in that it must be the minimum necessary for those purposes.
121. The panel first sought to identify any mitigating and aggravating factors in relation to Mr Rathbone's misconduct.
122. In terms of aggravating factors, the panel identified the following:
- Mr Rathbone's misconduct occurred in, or affected, several different areas of his practice, namely, his responsibility towards service users and their families, record keeping, data protection and, in the context of his portfolio, learning and development .
 - There had been multiple instances of misconduct. Mr Rathbone had told Ms C that he had visited Service User A when he had not; he repeated this to Ms D; and he then created a false record of the visit. His portfolio contained fifteen forged signatures or initials. He had searched for, and accessed, over 125 case files without any legitimate professional reason to do so.
123. The panel identified the following mitigating factors:
- There had been no previous regulatory findings against Mr Rathbone.

- Mr Rathbone appeared to be a competent newly qualified social worker, as evidenced by the contents of his portfolio, the reference from his employment agency and the positive comments which were reported to have been made about him by Service User A and the organisation where he was working (in an unqualified social work role) in 2020.
- Although Mr Rathbone had submitted a portfolio with forged signatures, the contents of that portfolio had not been falsified. Similarly, there was no evidence that the service user information which he wrongfully accessed had been disclosed to third parties or otherwise used by him.
- According to Mr Rathbone, he had been experiencing difficulties in his personal life at the time his misconduct occurred (and, indeed, Ms D confirmed that he had mentioned to her that he was having marital problems). However, the panel had only been provided with an outline of Mr Rathbone's personal issues and this was derived from his solicitors' representations to Social Work England's case examiners in October 2020. The panel had not received any first-hand submissions about these matters from Mr Rathbone or any supporting evidence. In any event, as previously mentioned, the panel was not persuaded that Mr Rathbone's several instances of deliberate dishonesty and deliberate accessing of case files without authority could properly be attributed to events in his personal life.

124. The panel then considered each of the courses of action open to it in ascending order of severity.

125. The panel did not consider that taking no further action, giving advice or making a warning order were appropriate. As noted in the Sanctions Guidance, those options would not be appropriate to address a situation, such as in the present case, where a panel has determined that there is a current risk to the health, safety and well-being of the public, as they would not place any restriction on Mr Rathbone's practice. Moreover, the panel did not consider that any of those measures would be adequate to maintain public confidence and proper professional standards, as they would not be sufficient to recognise the seriousness of Mr Rathbone's misconduct and would allow Mr Rathbone to continue to practice as a social worker without addressing the high risk that his conduct would be repeated.

126. The panel did not consider that a conditions of practice order would be adequate or appropriate in the present case for the following reasons:

- Mr Rathbone's conduct arose from attitudinal and behavioural issues, rather than from any lack of competence or capability. As indicated in paragraph 84 of the Sanctions Guidance, conditions of practice are less likely to be appropriate to address such issues. In this regard, the panel considered that the nature of Mr Rathbone's conduct was such that it would be difficult to formulate conditions which would be adequate to address the risk which he posed to the health, safety and well-being of

service users and prevent a repetition of his misconduct. In particular, the panel could not conceive of any conditions which would prevent Mr Rathbone from not being truthful about visits to service users, creating false records, submitting documents with forged signatures and wrongfully accessing sensitive service user information.

- The panel was not satisfied that Mr Rathbone would comply with any conditions of practice order which it might make given his limited engagement with the fitness to practice process to date and his apparent failure to undertake any remediation notwithstanding his acceptance of some of the allegations against him. The panel also noted that, despite receiving data protection training and being confronted with a warning notice each time he logged on to LCC's Liquid Logic system, Mr Rathbone had still proceeded to access case files without any operational reason on over 125 occasions.
- In any event, the panel did not consider that conditions of practice would be adequate to maintain public confidence and proper professional standards given the nature, extent and seriousness of Mr Rathbone's misconduct.

127. The panel then gave careful consideration to making a suspension order in respect of Mr Rathbone.

128. The panel considered that there was a reasonable argument in favour of making a suspension order. As mentioned above, Mr Rathbone appeared to be a competent newly qualified social worker and paragraph 93 of Social Work England's Sanctions Guidance stated that, where possible, it is in the public interest to support the return to practise of a trained and skilled social worker, if this can be achieved safely. According to the representations made by Mr Rathbone's solicitors in October 2020, Mr Rathbone "has worked hard to have a career and the thought that potentially it will be lost before he has really even begun his career terrifies him". A suspension order would give Mr Rathbone the time and opportunity to reflect on his misconduct, develop insight into it and undertake remediation with a view to returning to practice as a social worker at the end of the period of suspension. At the same time, a suspension order would protect the public from the risk of harm posed by Mr Rathbone whilst his misconduct remained unremedied. A suspension order would, in the context of a programme of remediation, also be adequate to maintain public confidence and proper professional standards if of a sufficient duration. In this regard, the panel considered that a period of three years would be appropriate in order to reflect the extent and seriousness of Mr Rathbone's misconduct for the purpose of maintaining public confidence and professional standards. Such a period would also allow adequate time for remediation, given the difficulties of remedying behavioural traits, such as dishonesty.

129. However, the suitability of a suspension order was predicated on Mr Rathbone being committed to remedying his misconduct but the panel did not consider that this was a realistic prospect. Notwithstanding his reported desire to save his career as a social worker,

in the 21 months since his solicitors sent their representations to Social Work England's case examiners, Mr Rathbone's engagement with the fitness to practise process appeared to have been limited to submitting a reference in June 2021 and attending an interim order hearing in October of the same year. There was no evidence of Mr Rathbone having developed any insight or undertaken any remediation in respect of the allegations concerning his portfolio (which, through his solicitor's representations, he had accepted). Nor did he acknowledge, or show any understanding of, the gravity of his other alleged conduct (which he did not admit) or demonstrate any appreciation of why that conduct was of such concern to his employer or his regulator. His position, according to his solicitors' representations, appeared to be that any actions of his which led to the regulatory concerns were due to his personal circumstances rather than his own choices and actions. Similarly, he had failed to attend, or make written submissions to, this hearing in order to give his account of events with a view to saving his career. The panel therefore had no confidence that Mr Rathbone would take advantage of the opportunity offered by a suspension order to engage with Social Work England, develop insight and embark on a programme of remediation.

130. Accordingly, as the panel had determined that a period of suspension would be unlikely to result in Mr Rathbone taking any meaningful steps to reduce the risk of his misconduct being repeated and as it had determined that a period of suspension of three years was required in order to maintain public confidence and proper professional standards, it then went on to consider whether, in these circumstances, Mr Rathbone's case might be better dealt with by a removal order. This was in line with paragraph 96 of the Sanctions Guidance, which stated that, where, as in the present instance, a panel considered that a case warranted a period of suspension longer than one year on the grounds of public confidence, the panel should also consider whether that case might be more appropriately disposed of by means of a removal order. The panel concluded that, in the absence of any realistic prospect that Mr Rathbone would use a period of suspension to develop insight into his misconduct and undertake remediation, informed and reasonable members of the public would, given the nature, seriousness and extent of his misconduct, expect him to be removed from the register. Likewise, for him to remain on the register in such circumstances would compromise the maintenance of proper professional standards,
131. In the circumstances, the panel concluded that a removal order was the appropriate and proportionate sanction in the present instance as no other outcome would be enough to protect the public and to maintain public confidence and proper professional standards.
132. **FINAL ORDER: that Mr Rathbone's entry be removed from Social Work England's register of social workers.**

Interim Order

133. Ms Steels, on behalf of Social Work England, asked the panel to exercise its discretion under paragraph 11(1)(b) of Schedule 2 to the Social Workers Regulations 2018 to make an interim suspension order for a period of 18 months in order to cover both the period during which Mr Rathbone could lodge an appeal against the panel's decision to make a removal order and the time required to dispose of any such appeal.
134. Having heard and accepted the Legal Adviser's advice on its powers under paragraph 11 of Schedule 2 to the Social Workers Regulations 2018 and having considered the matter, the panel decided to make the order requested by Ms Steels. The reasons for this decision were as follows:
- The panel had already concluded that it was necessary to impose some form of restriction on Mr Rathbone's practice because he posed a risk to the health, safety and well-being of the public and in order to maintain public confidence and proper professional standards. Accordingly, for the same reasons, the panel decided that some form of interim restriction on his practice was required during the period in which Mr Rathbone could lodge an appeal and whilst any appeal which he might make was ongoing.
 - Similarly, in terms of the type of interim order which it should make, the panel decided that, for the reasons given above in relation to the final order, a conditions of practice order would be inadequate to protect the health, safety and well-being of the public and to maintain public confidence and proper professional standards during the period in which Mr Rathbone could lodge an appeal and whilst any appeal which he might make was ongoing. Accordingly, the panel considered that the appropriate form of interim order was an interim suspension order.
 - With regard to duration, the panel decided that an interim suspension order for a period of 18 months would be adequate to cover the period which it might take to dispose of an appeal by Mr Rathbone against the final order, should he make one.
135. In arriving at the above decision, the panel recognised that making an interim suspension order in respect of Mr Rathbone would prevent him from working as a social worker and that, as a result, he could suffer a detriment both financially, professionally and otherwise. However, the panel considered that, in the present case, the need to protect the health, safety and well-being of the public and to maintain public confidence and proper professional standards outweighed any such detriment which Mr Rathbone might suffer.
136. **INTERIM ORDER: that Mr Rathbone be suspended from practising as a social worker for a period of 18 months.**

Right of Appeal

137. Under paragraph 16(1)(a) of Schedule 2 to 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.
138. Under paragraph 1(2) of Schedule 2 to 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.
139. 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.
140. 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

141. Under paragraphs 15(2) and 15(3) of Schedule 2 to 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.
142. 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.