

Social Worker: John Gilligan

Registration Number: SW121492

Fitness to Practise: Final Hearing

Dates of hearing:— 12-15 September 2022

Hearing Venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018.
2. Mr Gilligan did not attend and was not represented.
3. Social Work England was represented by Mr Donoghue, as instructed by Capsticks LLP.

Adjudicators	Role
Gill Mullen	Chair Adjudicator
Charlotte Scott	Social Worker Adjudicator
Baljeet Basra	Lay Adjudicator

Alicia Whitehouse	Hearings Officer
Mollie Roe	Hearing Support Officer
Paul Moulder	Legal Adviser

Service of Notice:

4. The panel of adjudicators (“the panel”) was informed by Mr Donoghue that notice of this hearing was sent to Mr Gilligan by email to his email address on the Social Work England Register (“the Register”). Mr Donoghue submitted that the notice of this hearing had been duly served.
5. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of the final hearing dated 12 August 2022 and addressed to Mr Gilligan at his address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr Gilligan’s registered email address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 12 August 2022 the writer sent by email to Mr Gilligan at the address referred to above the Notice of Hearing and related documents.

6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. Having had regard to Rule 14 of Social Work England's Fitness to Practise Rules (as amended) ("the Rules") and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Mr Gilligan in accordance with Rules 14, 44 and 45.

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Mr Donoghue on behalf of Social Work England. Mr Donoghue submitted that notice of this hearing had been duly served on Mr Gilligan. He submitted that there had been no formal response from him to the Notice of Hearing, but Social Work England had contacted Mr Gilligan by telephone on 15 August 2022, as recorded in an attendance note in the Service Bundle. Mr Donoghue made submissions on the relevant rules and case law that applied to proceeding in absence.
9. Mr Donoghue submitted that it could be clearly inferred from the telephone attendance note that Mr Gilligan had received the notice of hearing. It was recorded in the note that Mr Gilligan said he would like to attend the hearing but would confirm his position once he had read the papers. Mr Donoghue submitted that the indications were that Mr Gilligan had voluntarily absented himself from the hearing, knowing of the hearing and his right to attend.
10. Mr Donoghue submitted that the regulator had no power to compel Mr Gilligan to attend and there was no guarantee he would attend, if the hearing was adjourned. Mr Donoghue submitted that fairness to both parties had to be considered and he invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
11. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2003] UKPC*; *General Medical Council v Adeogba [2016] EWCA Civ 162*.
12. The panel considered all the information before it, together with the submissions made by Mr Donoghue on behalf of Social Work England. The panel was satisfied that notice of the hearing had been served on Mr Gilligan. It had been informed that there had been no further contact from Mr Gilligan, following the telephone conversation on 15 August 2022.
13. The panel was satisfied that Mr Gilligan was aware of this hearing and his right to attend. The panel had not been informed of any request for an adjournment. The panel noted that within the hearing papers there were previous written responses to the concerns from Mr Gilligan. Therefore, it did have some indication of his stance

regarding the allegations. In the note of the telephone conversation, Mr Gilligan was noted to have said that he would be unlikely to be submitting further evidence.

14. The panel, in all the circumstances, concluded that Mr Gilligan had chosen voluntarily to absent himself. The panel had no reason to believe that an adjournment would result in Mr Gilligan's attendance. The panel considered that the expeditious disposal of regulatory proceedings in the public interest was of real importance (*Adeogba*) and it had to be weighed against Mr Gilligan's interests and the circumstances of his absence.
15. Having weighed the interests of Mr Gilligan in regard to his attendance at the hearing with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Mr Gilligan's absence.

Allegation

Before registering and/or when registered as a social worker:

Directorship of Thoughts of Others Limited

1. *Between 2015 and August 2018, in your role as a Director of Thoughts of Others Limited, the Registered Provider of the care homes, you failed to adequately address and/or resolve regulatory breaches and regulatory requirements as identified by Ofsted in inspection reports, compliance notices and/ or the notices of decision to cancel a registration to carry on a children's home for the care homes as set out below:*
 - a. *Flowerstone Care Home.*
 - b. *Springboard Care Home.*
 - c. *Rosedale Care Home.*
 - d. *Stoney Lane Care Home.*
2. *Between 2015 and 2018, you did not take appropriate steps to remove yourself as a Director of Thoughts of Others Limited when your active involvement in the company ceased or significantly reduced.*

Application to Haven Care Group Limited

3. *Between 26th July 2018 and 3rd October 2018, you failed to tell Haven Care Group Limited that you were disqualified from being concerned in the management of a children's home due to the cancellation of the Ofsted registration of Thoughts of Others Limited, and allowed Haven Care Group Limited to apply to register you with Ofsted as Responsible Individual for Oak Lodge.*
4. *You knew you were disqualified from being concerned in the management of a children's home when Haven Care Group Limited made an application for you to become Responsible Individual for Oak Lodge.*
5. *You knew you were required to disclose the disqualification to Haven Care Group Limited when they made an application for you to become Responsible Individual for Oak Lodge.*
6. *Your conduct at 3 was dishonest by reason of 4 and 5.*

The matters outlined in paragraphs 1 – 6 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct

Preliminary matters

16. Mr Donoghue informed the panel that there was material within the papers which might mean that it should consider sitting in private at some points. The panel decided to keep in mind the potential issue of moving into private session if appropriate. Any information which should be heard in private will be redacted from the public version of this determination.

Summary of Evidence

17. Social Work England's case was that in 2002 Mr Gilligan set up the company Thoughts of Others Limited ("TOO Ltd") which owned and managed children's homes. At the relevant time, Mr Gilligan was one of three company directors of the company. He was also listed as Company Secretary.

18. TOO Ltd operated four separate children's homes, called Flowerstone, Rosedale, Springboard, and Stoney Lane ("the homes"). The homes were designed to care for children with complex needs. Each home had its own "Statement of Purpose" ("SoP") and these were similar in their content.
19. Social Work England's case was that TOO Ltd was providing care to children with some of the most complex needs and that such needs required extensive and careful management, and this was recognised in the SoP for each home.
20. The homes were inspected by Ofsted. Ofsted identified various shortcomings with the homes operated by TOO Ltd and took enforcement action, eventually leading to cancellation of TOO Ltd's registration.
21. Social Work England's case was that, in his capacity of director, Mr Gilligan failed to adequately address or resolve regulatory breaches identified by Ofsted, and his failures amounted to misconduct.
22. It was further alleged that Mr Gilligan had remained as a director, when his active involvement in the company had ceased, and this was misconduct. Finally, Social Work England alleged that Mr Gilligan had failed to disclose to Haven Care Group ("Haven") that he had been disqualified from running a children's home, when Haven had applied for him to be the Registered Individual for one of their homes. It was alleged that this was misconduct which was dishonest.
23. Mr Gilligan was registered as a social worker from 07 August 2018. Mr Gilligan therefore was not registered with the relevant regulator at the time for the whole of the period of the allegations. He had been previously registered, some years prior to events, but his registration had lapsed.
24. Despite the absence of registration again until August 2018, Social Work England relied on the 'public interest' ground for consideration of Mr Gilligan's alleged failures as potential misconduct, in accordance with regulation 25(2) of the Social Worker Regulations 2018.
25. Mr Gilligan's position in response to the first part of the Allegation was that he ceased any active role in the operation and/or management of the homes from around December 2015, [PRIVATE].
26. Social Work England referred to correspondence which Mr Gilligan sent to Ms A in September 2018 and an application to Ofsted seeking a waiver of his disqualification.
27. Social Work England's case was that certain representations made by Mr Gilligan in this correspondence and application did not accurately present the true position.

Social Work England's evidence

28. Social Work England relied on the evidence of Ms A, who was an Ofsted Inspection Manager. Ms A provided a witness statement and attended the virtual hearing to give oral evidence before the panel.
29. Ms A exhibited to her witness statement a bundle of documents. The bundle included copies of the inspection reports for the homes and the enforcement action taken by Ofsted.
30. Social Work England also relied on the evidence of Ms B, a paralegal working at Capsticks LLP. Ms B exhibited a screenshot of the Companies House website, as at 11 July 2022, in relation to TOO Ltd. She also exhibited email correspondence with the HR Manager of Haven.
31. Ms A stated in her evidence that she had not personally carried out any of the inspections of the homes, as that was not her role. She exhibited the Ofsted reports and other documents which, she told the panel, she had obtained from Ofsted's electronic records. Ms A stated that the documents showed that *"despite warnings from the inspectors at each visit that the homes required significant improvements, none of these recommendations were implemented within the homes"*.
32. Ms A further stated that, as well as being a director of TOO Ltd, Mr Gilligan was the Registered Manager ("RM") at Flowerstone from September 2007 to December 2012 and he was also the RM at Rosedale from April 2013 to March 2015. He continued to be listed as Company Secretary for TOO Ltd.
33. Ms A stated that Ofsted had eventually decided to cancel the homes' registration. It had issued Notices of Decision to each ("NOD"). The NOD summarised every failure and shortfall with the home during each inspection and contained a timeline of inspections and visits. They also set out the reasons for cancellation.
34. Ms A stated that Ofsted very rarely cancels children's homes registrations, preferring to work with organisations to help them improve, where possible. She stated that this was not the case with TOO Ltd's homes *"because the homes did not improve despite being given many opportunities to do so"*.
35. Ms A stated that, when the registrations were cancelled on 28 June 2018, Mr Gilligan became a "disqualified person" due to having been a Director of TOO Ltd at the time. This meant that he was then disqualified from carrying on, being involved in the management of, having a financial interest in, or being employed in, a children's home, where children are being privately fostered. This was the effect of the relevant legislation.
36. Ms A stated that, due to Mr Gilligan having been a director of TOO Ltd and having been financially involved with it, if he wanted a future role financially managing or

being a manager in a children's home again, he needed the consent of Ofsted, and Ofsted had the power to refuse or grant this.

37. In around September 2018, Ms A stated, Ofsted became aware that Mr Gilligan had been appointed as a Responsible Individual ("RI") for Haven at one of its children's homes. A form notifying Ofsted of his position had been submitted by Haven. This was an accidental discovery. Ms A stated that Ofsted contacted Haven, who said it was not aware of the disqualification.
38. Ms A's evidence was that Mr Gilligan subsequently made an application for Ofsted to waive the disqualification. As a result, Ofsted interviewed Mr Gilligan on 23 October 2018. Ms A said that Ofsted refused the application. Mr Gilligan appealed the refusal to the First Tier Tribunal but withdrew his application. Ms A produced as her exhibit a copy of the note of the interview.
39. Ms B provided a witness statement and exhibits. She did not attend the hearing. She stated that she had searched the Companies' House website and the search showed Mr Gilligan as being the Company Secretary for TOO Ltd on 11. July 2022, appointed on 04 April 2001.
40. Ms B also exhibited a chain of email correspondence between Capsticks and Haven, with the latter's HR manager. The email stated that Haven held two interviews with Mr Gilligan. It stated that Mr Gilligan had not mentioned any disqualifications, stating also that this was *"as he was not aware of any at the time of his job interview on 17th July 2018"*. The email further stated that Haven was informed of the disqualification on 03 October 2018 and Mr Gilligan's employment ended on that day.

Social Worker's evidence

41. Mr Gilligan did not attend the hearing and was not represented. However, he had provided a written response to Social Work England, around June 2021. Although the regulatory concerns were set out differently to those above, there were relevant comments from Mr Gilligan and the panel considered these and took them into account.

Finding and reasons on facts

Paragraph 1

42. The panel considered that Ms A was a competent and reliable witness and it accepted her evidence. The panel noted that it had been provided with copies of Ofsted reports for each of the four homes, together with copies of the Compliance Notices and NODs dated 28 June 2018 for each home. These were produced by Ms A as her exhibits from the Ofsted records. The panel considered that this was reliable evidence of the regulatory concerns which had existed and also evidence of the persistence of the concerns over time.
43. The panel decided that it was clear that there had been a series of regulatory breaches and concerns, as identified in the documents, leading up to the cancellation of registration in June 2018, in the case of each of the homes.
44. The panel considered Mr Gilligan's responsibilities in relation to management of the homes operated by TOO Ltd. It noted that the company was the 'Registered Provider' for each of the homes, but at all relevant times, it was not in dispute that Mr Gilligan had been a director of TOO Ltd.
45. The panel considered that, as a director of TOO Ltd, Mr Gilligan owed duties to the company. These included the duties set out in the Companies Act 2006, including the duties pursuant to s172, to promote the success of the company, to exercise independent judgement (s173) and to exercise reasonable care, skill and diligence (s174).
46. Although the panel acknowledged that these duties were primarily owed to the company itself, its owners and shareholders, the panel was satisfied that this meant that the directors of TOO Ltd would have to ensure that the homes were run in accordance with relevant legislation. Therefore, the directors would have a duty to react appropriately to information, such as from the inspections and notices, that the homes were being made the subject of enforcement action by Ofsted.
47. The panel was satisfied that it had evidence of regulatory breaches and concerns, during the period between 2015 and August 2018, which had not been adequately addressed or resolved. The panel was satisfied that this demonstrated a breach of duty by those responsible.
48. The panel was satisfied that Mr Gilligan had been a director during this period and had been subject to a duty to ensure the successful running of the company and its homes. In addition, Mr Gilligan had been listed as the Company Secretary, and therefore would have responsibility for liaising with the directors and signing the company accounts. Further and in addition, the panel accepted the evidence that Mr Gilligan had been noted as the Safeguarding Lead for the homes, on occasion during the period in question. In the panel's determination, these positions added to the responsibility Mr Gilligan bore for ensuring the safe running of the homes.

49. Mr Gilligan, in his response to the regulatory concerns, had accepted that he had not acted appropriately in his role as a Director of Thoughts of Others Limited in that he had failed to ensure proper management and insight as Registered Provider of the care homes to address concerns raised by Ofsted about poor performance and risk of harm to service users between 2015 and 2018. He had commented: *"I have always accepted that Ofsted had concerns regarding the running of the company and the decisions made by the directors."*
50. Mr Gilligan's position, expressed in his response, was that he had always accepted full responsibility in his role as director. However, during the period in question, he maintained, he had *"stepped back from my operational role within the company"* and "[PRIVATE]".
51. Mr Gilligan stated that, [PRIVATE]. He stated that *"it was agreed that I would stand down from the front-line operational responsibilities and I would take the time I required to take care of myself and recover"*. He had expressed essentially the same position in his responses to Ofsted.
52. The panel considered the evidence in the papers which indicated, according to the submission of Social Work England, continuing involvement by Mr Gilligan in the operation of the homes by TOO Ltd during the relevant period.
53. The panel noted that Mr Gilligan was recorded as the supervisor/appraiser of another individual in the company's documents, over the period December 2016 to May 2017. The supervision records showed that he provided supervision and completed documentation in relation to this on 14 December 2016, 16 February 2017, 12 April 2017 and 28 May 2017. In a note relating to a telephone conference with counsel concerning a matter relating to a child, Mr Gilligan had been recorded as taking part in the conference.
54. In the Annex A document for the inspection report for Springboard home dated December 2016, Mr Gilligan was recorded as director/safeguarding officer of the company. In the similar annexes for Rosedale and Stoney Lane for 2017 he was listed as "director/safeguarding officer". A report from a monitoring visit to Rosedale on 01 May 2018, records that a member of staff had received training from Mr Gilligan around one year previously.
55. The panel also noted that, in the Statement of Purpose issued for each of the homes, Mr Gilligan's name featured prominently on a number of occasions. The panel had been told that the Statement of Purpose for the Rosedale Home had been the 2017 version and updated 2018 version, and this listed Mr Gilligan's name under 'Leadership and Management'. In the Statement of Purpose for Flowerstone, it stated that Mr Gilligan:

“Since starting Thought of Others in 2002, Sean has been a registered manager along with this Sean has the dual role of being a Director, which carries with it a variety of responsibilities”.

The panel noted that a similar statement appeared in the Statement of Purpose for all four homes.

56. [PRIVATE].

57. The panel noted Mr Gilligan’s assertion from his response to the regulatory concerns that he had *“stepped back from my operational role within the company”*. It acknowledged that there was some support for his having experienced a period of personal difficulty and had no reason to doubt that this was due to bereavement.

58. However, the panel concluded that, considering the other evidence of his involvement, on the balance of probabilities, Mr Gilligan had continued to be involved in the running of TOO Ltd. In reaching this conclusion, the panel took into account the documentation of his continued responsibility for training and supervision/appraisal. It also noted that he had continued to be listed throughout as a director and company secretary. The panel noted Mr Gilligan’s acceptance that he had continued to receive an income from the company.

59. Further, in addition to the panel’s findings concerning Mr Gilligan’s actual involvement in the operation of the company, it considered that on the balance of probabilities he was aware of his continuing status as a director and company secretary. In those circumstances, Mr Gilligan remained accountable for his responsibilities. The panel concluded that Mr Gilligan’s continuance in these positions meant that his duties towards the company continued throughout the period in paragraph 1 of the Allegation.

60. The panel found that Mr Gilligan owed duties to adequately address and/or resolve regulatory breaches and regulatory requirements in the relevant period. It further found that those matters had not been addressed and/or resolved and in this respect, Mr Gilligan had failed in his duties.

61. The panel found paragraph 1 proved, in respect of each of the homes:

(a) Flowerstone Care Home

(b) Springboard Care Home

(c) Rosedale Care Home

(d) Stoney Lane Care Home.

Paragraph 2

62. The panel noted that Mr Gilligan asserted that, during the relevant period in paragraph 2 of the Allegation, he had stepped back from his “operational” role. It had found that there was some support for that. However, the panel had also found that Mr Gilligan’s active involvement in TOO Ltd had not ceased, as set out above.
63. The panel considered that, continuing in the role as Company Secretary, Mr Gilligan would have continued to have responsibilities to meet with the directors and to sign off the company accounts.
64. The panel noted that, as set out above, Mr Gilligan’s name was still present on important documents, such as the Statement of Purpose for the homes and there was evidence that he was expected to fulfil roles in a supervisory capacity. He had also been noted as having important responsibility for safeguarding duties.
65. The panel considered that, in the circumstances that Mr Gilligan had been aware of his limitations to carry out his obligations to the full, and where it appeared that this coincided with a decline in the standards of the company’s homes, Mr Gilligan should have taken steps to remove himself from the role of director (and company secretary) so that the role could be properly carried out by another. The homes had important functions in the care of vulnerable children and it was important that they were properly managed.
66. In fairness to Mr Gilligan, in his response to the regulatory concerns, he stated that he accepted the point that *“what I should have done is resign my role as a director”*.
67. It was not in issue that Mr Gilligan had continued as a director of TOO Ltd throughout the relevant period and there was no evidence of him having taken any steps to remove himself as a director.
68. The panel found paragraph 2 proved.

Paragraph 3

69. The panel noted that the effects of cancellation of registration of the homes on those persons who were directors and/or had a financial interest in the homes had been very clearly set out in the NODs sent to the homes in June 2018. The panel accepted evidence that the NODs had been posted out and addressed to the Company Secretary, Mr Gilligan.

70. The panel was satisfied on the evidence that, at the time Haven applied for Mr Gilligan to be appointed as Responsible Individual, he had been disqualified from being concerned in the management of a children's home due to the cancellation of TOO Ltd's registration.
71. The panel concluded that, on the evidence, notice of the disqualification had been sent to Mr Gilligan, in his role of Company Secretary, and he ought to have disclosed the information to Haven, because it meant that he was ineligible for appointment.
72. The panel accepted the evidence from Haven, recorded in the email, that Mr Gilligan had not mentioned his disqualification. It was a reasonable inference that Haven would not have sought appointment for a disqualified person. The panel accepted Haven's assertion that the first it knew of the disqualification was when it was informed by Ofsted on 03 October 2018.
73. Therefore, the panel found paragraph 3 proved.

Paragraph 4

74. Paragraph 4 alleged that Mr Gilligan had known about his disqualification when Haven made the application for him to be the RI. The panel noted Mr Gilligan's explanation that the company liquidators had not passed on documents to him which informed him of the disqualification. However, the panel took into account the following evidence.
75. Mr Gilligan was an experienced social worker and occupied an important position in TOO Ltd. He had experience in the relevant field and had set up TOO Ltd. He had been Company Secretary throughout, appointed in 2001. In the panel's view it was likely that he had a very good understanding of the legislation concerning registration.
76. Mr Gilligan had run the homes successfully for a number of years. The homes had received a number of inspections and visits and the concerns with the homes had developed over a number of years. The panel had found that he had continued to be actively involved in the company during the relevant period. Mr Gilligan was aware that he had financial interest in TOO Ltd, which was an additional ground for his disqualification, in addition to having been a director/manager.
77. The panel had found that Mr Gilligan had not completely ceased active involvement in the company during the relevant period. It considered that the matter of impending cancellation and its consequences would have been a much-discussed topic with the directors. In the record of interview with Ofsted, Mr Gilligan had said, regarding his contact with other directors that *"If I had contact, then they would give*

me highlights". The panel considered that the matter of Ofsted's concerns leading to the cancellation of the registration would have been included in these 'highlights'.

78. Ofsted had sent out four notices, setting out the effects of the cancellation in considerable detail. The consequences of cancellation had also been set out in the Ofsted 'Social Care Compliance Handbook'. Mr Gilligan made specific reference to this document when applying to Ofsted for the waiver.

79. The panel considered that, on the balance of probabilities the information concerning Mr Gilligan's disqualification would have come to his attention at or around the time of the NOD's being received, in June 2018. Therefore, Mr Gilligan would have known of the disqualification when Haven made its application around September 2018.

The panel found paragraph 4 proved.

Paragraph 5

80. The panel considered that, if Mr Gilligan knew of the disqualification and its effect on him, he would have known that he ought to have disclosed the same to Haven. The obligation would have been apparent from the same information concerning the effect of cancellation in the NODs and an understanding of registration.

81. The panel found paragraph 5 proved.

Paragraph 6

82. The panel had found that Mr Gilligan knew of his disqualification and that he was required to make the disqualification known to Haven at the time of it making an application for him to be the RI. The panel had found that Mr Gilligan had failed to tell Haven of the disqualification.

83. The panel considered that ordinary decent people would regard the withholding of the information from Haven that Mr Gilligan was effectively barred from being appointed RI for one of Haven's homes as dishonest. The effect of the action was an attempt to undermine the protections set up around registration and to obtain an appointment for which Mr Gilligan was not entitled, without first obtaining a waiver from Ofsted.

84. The panel found paragraph 6 proved.

Finding and reasons on grounds

85. The panel having found facts proved, next considered whether the alleged statutory ground of misconduct was made out. It bore in mind that this was a matter for its judgement at this stage, not involving a burden of proof.
86. Mr Donoghue submitted that findings of dishonesty against a professional person were a serious matter. He referred the panel to the Standards of Proficiency of the HCPC which had applied at the time. He submitted that the failure of Mr Gilligan to disclose his disqualification breached multiple standards.
87. Mr Donoghue submitted that Mr Gilligan had re-registered as a social worker from 07 August 2018 and became subject to these standards before his dealings with Haven. He submitted that Mr Gilligan had therefore been subject to the provisions of the HCPC standards but had failed to observe them and failed to ensure the public were protected in his actions.
88. Mr Donoghue submitted that dishonesty which occurred in a professional context was a serious matter. He submitted that, on the facts of this case, Mr Donoghue had sought to evade protections designed for the benefit of the public, in order to gain employment for himself.
89. Mr Donoghue submitted that this misconduct engaged the HCPC Standards, at paragraphs 3.1 and 2.8, dealing with the need to maintain high standards and relationships based on respect and honesty (see standards below). He submitted that this was serious professional misconduct.

“3.1 – understand the need to maintain high standards of personal and professional conduct

2.8 – recognise that relationships with service users and carers should be based on respect and honesty”

2017 – Standards of Proficiency

90. Mr Donoghue submitted that the panel’s findings in respect of paragraph 1 of the Allegation also amounted to misconduct. There had been a failure to address issues at four children’s homes. He submitted that, as a director, Mr Gilligan had been required to ensure the safety of the service users. Ofsted had found significant failures and made clear what these had been. The breaches had resulted in various interventions by Ofsted.
91. Mr Donoghue submitted that, despite his suggested reduction in involvement, Mr Donoghue must have retained a level of awareness, in his position as director and company secretary. He submitted that there had been a failure on Mr Gilligan’s part to take any identifiable action in response to the concerns.

92. Mr Donoghue submitted that, notwithstanding Mr Donoghue's lack of registration in the period relating to paragraphs 1 and 2, there were relevant sections of the HCPC Standards issued in 2012 which applied. He submitted that the standards in paragraphs 1, 3, 4 and 15 were engaged on the facts (see below).
93. Mr Donoghue submitted that, even though Mr Gilligan had not been registered at the time, the provisions of paragraph 25(2) of the Regulations permitted the panel to consider his misconduct, if this was deemed in the public interest. He submitted that the purpose of this provision was to ensure that people who had breached the standards prior to registration could still be dealt with.
94. Mr Donoghue submitted that Mr Gilligan, as a director, failed to ensure that appropriate steps were taken to deal with Ofsted's concerns and this was serious professional misconduct. He submitted that Mr Gilligan's failure to remove himself as a director could be regarded "in the round" with the first failure. Alternatively, Mr Donoghue said, the failure to remove himself as a director could be separately regarded as a failure to realise that he had reached a point where he could not meet the requirements of his position. This too was misconduct.
95. The Legal Adviser advised the panel that it should consider its findings of fact and determine whether this was misconduct, which was serious professional misconduct. He advised that whether misconduct was 'serious' was a matter for the judgement of the panel. Not all misconduct would amount to 'serious' professional misconduct. He advised the panel that dishonesty was amongst the more serious types of misconduct, but there may be a spectrum of dishonesty, dependent on the facts. It was a matter for the panel's determination.
96. The panel considered its findings of fact and the submissions made by Mr Donoghue. It also again took into account the comments made by Mr Gilligan in response to the regulatory concerns.
97. The panel was aware that not every finding of fact against Mr Gilligan would automatically amount to misconduct. The panel bore in mind that, to amount to misconduct as a statutory ground, it had to be satisfied that this was serious professional misconduct.
98. The panel noted that, for a period of the facts found in relation to the Allegation, Mr Gilligan had not been registered with the HCPC. However, it also noted the provisions of paragraph 25(2) of the Regulations, which states:

(2) The grounds referred to in paragraph (1) are—

(a) misconduct,

(b) ...,

provided that an alleged matter which occurred outside the United Kingdom, or at a time when the person was not registered, may only be grounds for the purposes of paragraph (1) where the regulator considers that to be in the public interest.

99. The panel considered that the facts found in relation to paragraphs 1 and 2 of the Allegation had occurred over a significant and protracted period. They related to serious failures in the matter of children's safeguarding.
100. The panel noted that the period of these events continued up to a point where Mr Gilligan once again became a registered social worker, having been previously registered.
101. The panel was mindful of the Overarching Objective and its three limbs and that the panel was concerned with determining the current fitness to practise of Mr Gilligan, to which his past conduct could be relevant.
102. In all the circumstances, the panel decided that it was in the public interest to consider the factual matters in paragraphs 1 and 2 as alleged matters for the purposes of the statutory ground of misconduct.
103. The panel considered that the facts found proved involved a number of significant regulatory breaches and regulatory matters which had occurred in relation to four children's homes over a protracted period of time. There had been a documented failure to respond to escalating enforcement action from Ofsted by the directors of TOO Ltd, including Mr Gilligan.
104. The panel considered that the following HCPC Standards were engaged on the facts:
- 1 be able to practise safely and effectively within their scope of practice***
- 1.1 know the limits of their practice and when to seek advice or refer to another professional*
- 1.2 recognise the need to manage their own workload and resources and be able to practise accordingly*
- 1.3 be able to undertake assessments of risk, need and capacity and respond appropriately*
- 1.4 be able to recognise and respond appropriately to unexpected situations and manage uncertainty*

1.5 be able to recognise signs of harm, abuse and neglect and know how to respond appropriately

2 be able to practise within the legal and ethical boundaries of their profession

2.1 understand current legislation applicable to the work of their profession

2.2 understand the need to promote the best interests of service users and carers at all times

2.3 understand the need to protect, safeguard and promote the wellbeing of children, young people and vulnerable adults

2.4 understand the need to address practices which present a risk to or from service users and carers, or others

...

2.6 be able to exercise authority as a social worker within the appropriate legal and ethical frameworks

2.7 understand the need to respect and uphold the rights, dignity, values and autonomy of every service user and carer

2.8 recognise that relationships with service users and carers should be based on respect and honesty

...

2.10 understand what is required of them by the Health and Care Professions Council

3 be able to maintain fitness to practise

3.1 understand the need to maintain high standards of personal and professional conduct

3.2 understand the importance of maintaining their own health and wellbeing

...

4 be able to practise as an autonomous professional, exercising their own professional judgement

4.1 be able to assess a situation, determine its nature and severity and call upon the required knowledge and experience to deal with it

4.2 be able to initiate resolution of issues and be able to exercise personal initiative

4.3 recognise that they are personally responsible for, and must be able to justify, their decisions and recommendations

4.4 be able to make informed judgements on complex issues using the information available

4.5 be able to make and receive referrals appropriately

15 be able to establish and maintain a safe practice environment

15.1 understand the need to maintain the safety of service users, carers and colleagues

105. The panel decided that Mr Gilligan had failed to ensure that the homes were operated within the legal boundaries (standard 2), by allowing the homes to continually be in breach of the regulations and standards as identified by Ofsted. This also involved an apparent failure on his part to understand and appreciate the current legislation (2.1).

106. In addition, Mr Gilligan had not acted ethically, by allowing breach of the legislation to be sustained over such a period, in the face of repeated warnings. He had not promoted the best interests of service users or apparently understood the need to safeguard children (2.2, 2.3).

107. The panel considered that there had been a failure on Mr Gilligan's part to practise autonomously, and to exercise appropriate professional judgement by seeking to withdraw from responsibility as a director and not using his knowledge and experience (4.1). He had failed to acknowledge his personal responsibility as director (4.3).

108. Importantly, the panel was of the view that Mr Gilligan had failed in the obligation to understand the need to maintain the safety of service users, by allowing serious failings at the homes to persist (15.1).

109. The panel was in no doubt that, in view of the significance and duration of the failings at the four homes and Mr Gilligan's lack of demonstrable action to set in train steps to remedy them, that this was serious professional misconduct.
110. The panel considered that, the facts in relation to paragraph 2 of the Allegation stood in tandem with those in paragraph 1. It had found that Mr Gilligan had not completely withdrawn from being involved in the operation of the homes after 2015. It was the case that he also retained obligations by his continuance as a director and company secretary throughout.
111. Therefore, to the extent he had withdrawn, or intended to, he had a concomitant duty to ensure another person had been in place to ensure his duties continued to be met. In addition, Mr Gilligan had a duty to recognise the degree to which his duties were not being met. The panel considered that, by not meeting either of these aspects of his duty as director, Mr Gilligan had engaged in misconduct.
112. The panel considered the matters in paragraphs 3 to 6 together, which all related to Mr Gilligan's failure to notify Haven of his disqualification, despite his knowledge and having allowed Haven to apply for him to be an RI for one of its homes.
113. The panel noted that dishonesty in relation to professional practice is always a serious matter, although there can be a spectrum of dishonesty, dependent on the facts.
114. The panel considered the dishonesty in this case to be serious. It had found that, in the knowledge of his disqualification and that he ought to have disclosed the same, Mr Gilligan had failed to disclose relevant information.
115. The panel noted that the issue of disqualification was part of framework devised for the protection of the public. It decided that Mr Gilligan's actions in failing to disclose undermined that protection and raised a risk to the public. It aggravated the matter that this was done in an attempt to gain employment for himself. This was a clear breach of paragraph 2 of the Standards and contrary specifically to 2.1, 2.2, 2.3 and 2.4. It was serious professional misconduct.
116. The panel determined that the facts found on this Allegation, in relation to the failure to adequately address and/or resolve regulatory breaches and regulatory requirements, the failure to remove himself as director and the dishonest failure to advise Haven of his disqualification from being concerned in the management of a children's home, were all misconduct by Mr Gilligan.

Finding and reasons on current impairment

117. Having found misconduct, the panel next considered whether this misconduct found as a statutory ground also demonstrated that Mr Gilligan's fitness to practice is impaired.
118. Mr Donoghue submitted that being 'fit for practise' meant having the skills, knowledge and health to be able to practise safely, without restrictions. Impaired fitness to practise may also include acts which damaged public confidence in the profession and impairment may also involve consideration of acts which occurred outside of professional practice, but which affected public confidence.
119. Mr Donoghue submitted that not every finding of misconduct must result in a finding of impairment. He referred the panel to relevant case law, including *Cohen v GMC*, *CHRE v NMC & Grant* and the Sanctions Guidance ("SG") issued by Social Work England.
120. Mr Donoghue submitted that the dishonesty in this case engaged all three limbs of the Overarching Objective of Social Work England. He submitted that dishonest conduct is difficult to remediate. Mr Donoghue submitted that the failures as a director put the public at risk of harm, which the SG suggested can be as serious as where harm occurs, since the panel could not be certain of protection for the public in the future.
121. Mr Donoghue submitted that Mr Gilligan has provided little in the way of evidence of insight or remediation. He submitted that Mr Gilligan had repeatedly denied his dishonest conduct. He submitted that Mr Gilligan had failed to recognise the risk to children arising from his inaction; he had sought instead to deflect blame.
122. Mr Donoghue submitted that Mr Gilligan's limited engagement in the process meant that the panel had limited information about his further insight. It would not be appropriate to hold his lack of attendance against Mr Gilligan, but as a result the panel did not have further information about insight. There was no evidence of Continuing Professional Development ("CPD") or training undertaken.
123. Mr Donoghue submitted that the issue of impairment was a forward-looking exercise, but the panel should also consider the nature of the misconduct. He submitted that members of the public and fellow social workers would be concerned and would not expect that Mr Gilligan be allowed to return to unrestricted practice.
124. The Legal Adviser advised the panel that it should consider its findings of misconduct and consider whether that demonstrated impaired fitness to practise. The panel should consider whether Mr Gilligan's fitness to practise is currently

impaired, but in doing so had to consider how he had acted in the past. It should consider whether the past misconduct was remediable, whether it had been remedied and whether it was highly unlikely to be repeated. However, it should also consider whether a finding of impaired fitness to practise was necessary in the wider public interests, of maintaining public confidence in the profession and maintaining professional standards.

125. The panel bore in mind that the matter of impaired fitness to practise was for its judgement, not involving a burden of proof. The panel carefully considered its findings of fact and misconduct and all the information known to it. It bore in mind that not every finding of misconduct automatically results in a finding of impairment.

126. The panel first considered whether the misconduct in the case was remediable, whether it had been remedied and whether it was highly unlikely to be repeated.

127. The panel acknowledged that dishonest misconduct is hard to remediate, since it involves potential attitudinal issues. The panel noted, on the matter of insight that Mr Gilligan had expressed a degree of insight, inasmuch as he had acknowledged that Ofsted had issues with the running of the homes. He had also accepted in his responses that he had not acted appropriately as a director and should have removed himself as a director.

128. The panel could not give Mr Gilligan any credit for the insight into the dishonest conduct. Mr Gilligan was entitled to deny this conduct, but the panel had found that his conduct had been dishonest on the evidence.

129. The panel considered that, in addition, Mr Gilligan's insight into his actions as a director, in relation to paragraphs 1 and 2 of the Allegation was very limited. He had not provided any reflection or insight into the effect of the failings as a director to ensure the proper running of the children's homes, on the service users or the wider public.

130. The panel considered that the failings in regard to the children's homes, as identified by Ofsted had meant that the homes were not run in accordance with proper standards. This in turn had led to a risk to the vulnerable service users accommodated in the homes. The panel was of the view that these matters breached fundamental tenets of the social work profession, to promote the best interests of service users and to protect and safeguard and promote the wellbeing of children.

131. [PRIVATE].

132. In addition, the panel considered that honesty in social workers was a fundamentally important characteristic, due to the very important role that the public expects them to fulfil, dealing with the vulnerable in society.
133. The panel decided that, in light of the seriousness of the misconduct and the very limited evidence of any insight and remediation, Mr Gilligan's past misconduct has not been remedied. Therefore, the panel concluded that there was a risk that the past misconduct might be repeated and his fitness to practise is impaired.
134. In light of this and the seriousness of the misconduct itself, particularly Mr Gilligan's failure to take action in relation to the homes and his dishonest misconduct, the panel also found impairment in the wider public interests of maintaining public confidence and professional standards. It considered that members of the public would be very concerned at the misconduct of a member of the profession in the circumstances of the facts found and also the panel needed to send a clear message as to the standards expected of the profession.
135. The panel determined that Mr Gilligan's fitness to practise is impaired.

Decision on sanction

136. The panel, having determined that Mr Gilligan's fitness to practise is currently impaired went on to consider pursuant to paragraph 12(3) of Schedule 2 of the Regulations and Rule 32(c)(i)(c) what, if any sanction it should impose.
137. Mr Donoghue submitted that the matter of sanction was for the panel. He reminded the panel that the purpose of sanction was to protect the public and also to maintain public confidence in the profession.
138. Mr Donoghue submitted that the SG states that some concerns are so serious that action is required even if the social worker poses no current risk to the public. He submitted that paragraph 40 of the guidance mentions dishonesty as an example of cases that are likely to be viewed particularly seriously, given the access social workers have into people's homes and lives.
139. Mr Donoghue referred the panel also to further specific paragraphs in the SG relating to dishonesty. He submitted that failure to disclose a disqualification was similar in effect to misrepresenting qualifications and that it was stated to be particularly serious. He submitted that evidence of professional competence cannot mitigate such behaviour.

140. Mr Donoghue submitted that failures as a director ought to be considered serious failures. In this case there had been extensive repeated failings in the homes which had not been addressed. He submitted that the failings had placed service users at risk.
141. Mr Donoghue submitted that it was relevant that the panel had found little in the way of insight or remediation. He submitted that there had been no apology and only limited expressions of remorse; there was no evidence of CPD or learning from the events. He submitted that Mr Gilligan had not engaged with the hearing. Mr Donoghue submitted there was a real risk of repetition of misconduct.
142. Mr Donoghue drew the panel's attention to the email from another director and a letter sent to Ofsted by Haven, which were included in the bundle. He submitted that, whilst not perhaps true testimonials, these did give some positive support to Mr Gilligan. [PRIVATE].
143. Mr Donoghue submitted that the panel should impose the least restrictive sanction necessary. He drew the panel's attention to the various paragraphs of the SG on particular sanctions, submitting that some action was required in view of the finding of the ongoing risk.
144. Having taken the panel through the various sanctions, Mr Donoghue submitted that the appropriate order was a removal order. He submitted that the public must be able to trust accuracy of information. He said that there had been serious professional dishonesty, which undermined proper professional standards. In addition, the panel had found a lack of insight.
145. Mr Donoghue submitted that the panel was not just dealing with dishonesty; Mr Gilligan had failed to carry out an important role as director and had breached his obligations to promote the best interests of service users and to maintain safety.
146. The Legal Adviser advised the panel that, having found impairment, the panel now had to consider what, if any sanction to impose. The panel should refer to its findings as to fact and impairment. It should refer to the SG and impose the minimum sanction which met the level of impairment, balancing the interests of the public with Mr Gilligan's interests. It had to set out its reasons for any particular sanction which it imposed.
147. The panel noted that it had found impairment based on a risk of repetition of misconduct and also in the wider public interest due to the seriousness of the misconduct. It had found that Mr Gilligan had very limited insight into the issues and had provided no evidence of having undertaken any remediation. There was no evidence of Mr Gilligan having undertaken any CPD or reflection on the issues in the

case. In addition, the Allegation included a finding of dishonest misconduct, which was a serious finding for a professional.

148. The panel took into account the SC (as amended July 2022). It first considered whether to end the case by taking no action. It took into account that this would result in Mr Gilligan being able to resume practice without restriction. In the panel's view there were no exceptional circumstances in the case which would justify such a course. Moreover, to take no action when the panel had found a risk of repetition of misconduct would not sufficiently protect the public.

149. The panel considered giving advice or a warning to Mr Gilligan. However, as in the case of taking no action, such a course would also not serve to restrict his practice and would not be consistent with the risks identified in the panel's findings. The panel also considered that giving advice or a warning did not mark the seriousness of the misconduct and would not serve to maintain public confidence in the profession or promote professional standards.

150. The panel next considered imposing a conditions of practice order. It acknowledged that such an order would place restrictions on Mr Gilligan's practice in the future. However, the panel noted paragraph 84 of the SG, which states:

"84. The primary purpose of conditions of practice orders is to protect the public while the social worker takes any necessary steps to remediate their fitness to practise....."

151. In the panel's view, there was insufficient indication from Mr Gilligan that he had an intention to remediate his past misconduct. He had not provided any indication that he had undertaken any remediation despite the repeated findings by Ofsted over an extensive period of time. Further, the panel had already referred to the matter of Mr Gilligan's very limited insight into the issues and the effect on service users and the public of his past misconduct, which limited the prospect of any remediation by Mr Gilligan in the future.

152. The panel noted paragraph 85 of the SG, where it states:

"85. Conditions are most commonly applied in cases of lack of competence or ill health. They're less likely to be appropriate in cases of character, attitudinal or behavioural failings, or in cases raising wider public interest issues. For example, conditions would almost certainly be insufficient in cases of sexual misconduct, violence, dishonesty, abuses of trust and discrimination involving a protected characteristic."

153. The panel noted that the dishonesty matter in this case involved potential attitudinal failings. It had found that Mr Gilligan had not provided any insight into his

dishonest behaviour. Although he had responded to the regulatory concerns and spoken with Social Work England's representative about receiving the notice of hearing, Mr Gilligan had not provided further insights or reflections. He had not engaged with the hearing at all to provide any reassurance that he intended to start a process of remediation, or how this might be attempted.

154. In the circumstances, the panel concluded that a conditions of practice order would not be appropriate, since the panel could not be confident that conditions could be formulated which would adequately protect the public. The panel also concluded that conditions of practice would not sufficiently mark the seriousness with which the public would regard the serious failings and dishonesty in this case.

155. The panel next considered a suspension order. It noted that it had the power to suspend Mr Gilligan's registration for up to 3 years. It took into account paragraph 93 of the SG which states:

"93. Suspension orders can be imposed for a period of up to three years. Suspension is appropriate where no workable conditions can be formulated that can protect the public or the wider public interest, but where the case falls short of requiring removal from the register or where removal is not an option."

156. The panel [PRIVATE]. It also took into account his admissions in response to the regulatory concerns, as demonstrating some insight.

157. The panel noted that it had also received copies of a testimonial-type document written by a fellow former director and another letter from Haven. In addition there was a letter from a former employee of TOO Ltd. However, the panel decided that Mr Gilligan's insight into the issues in the case was very limited. In particular, he had offered no insight into the effects of his failures on vulnerable service users, the wider public or the profession.

158. The panel decided that there was no indication from Mr Gilligan that he intended to use a period to remediate his past misconduct or to gain any necessary insight.

159. The panel considered that the dishonesty in this case was an important factor. It accepted the submission made by Social Work England that the dishonest misconduct had sought to undermine protections put in place by legislation to protect children.

160. The panel therefore went on to consider the guidance around a removal order. It noted paragraph 99 and 107 of the SG, which state:

"98. A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the

profession or maintain proper professional standards for social workers in England. A decision to impose a removal order should explain why lesser sanctions are insufficient to meet these objectives.”

“107. Social workers are routinely trusted with access to people’s homes, and highly sensitive and confidential information. They are also routinely trusted to manage budgets including scarce public resources. Any individual dishonesty is likely to threaten public confidence in the proper discharge of these responsibilities by all social workers.”

161. The panel considered that, in all the circumstances, a suspension order was insufficient to protect the public. It had found that there had been significant failings in the management of the TOO Ltd children’s homes, which Mr Gilligan, despite being a director and company secretary and being listed at times as ‘safeguarding officer’ had failed to address.
162. Over a period of around three years, the failings at the homes had not been addressed, despite escalating enforcement procedures applied by Ofsted. The panel had found that Mr Gilligan had continued to be actively involved in the management after 2015 and had still been in place in his roles as director and company secretary. Beyond that, he had failed in his obligation to ensure that, if he could not, others would act.
163. It was after Ofsted had taken the step of removing registration that Mr Gilligan had gone on to attempt to circumvent the statutory protections in relation to Haven, as the panel had found. Mr Gilligan had offered the panel no real indication that the risk of repetition in relation to his failings as a director would be managed in the future.
164. The panel concluded that, there was no purpose in imposing a period of suspension for the above reasons and no lesser sanction than a removal order would suffice. It also considered that the seriousness of the misconduct, both as to the failings as director and the dishonest conduct combined to make a removal order the only proportionate sanction.
165. The panel took into account that, in making a removal order, it was depriving Mr Gilligan of the ability to work in a registered capacity as a social worker. The panel recognised that Mr Gilligan may suffer financial and/or reputational damage as a result. However, balancing these considerations with the matters set out above and the public interest, the panel concluded that a removal order was still the proportionate order, in view of the serious failings and the risk to the public from any repetition of misconduct.

166. The panel determined to order the removal of Mr Gilligan's entry from the register.

Interim order

167. In light of its findings on Sanction, the panel next considered an application by Mr Donoghue for an Interim Suspension Order to cover the appeal period before the Sanction becomes operative.
168. Mr Donoghue submitted that the panel had power pursuant to paragraph 11(1)(b) of Schedule 2 to the Regulations to grant an interim order to cover the appeal period. He made an application for an Interim Suspension Order. He submitted this order was necessary for protection of the public. He submitted that the SG makes clear that an interim order can also be made on the wider grounds, although caution should be exercised before making an interim order purely on that basis. He referred the panel to its findings already made. Mr Donoghue submitted that there is a risk to the public identified in its findings as to the failures as a director and also from the failure to declare his disqualification. Mr Donoghue submitted that an interim order should also be made in the wider public interest of maintaining public confidence in the profession.
169. The panel was mindful of its earlier findings and that it had found a risk of repetition of misconduct in the case. The panel noted that it had found a risk of repetition of misconduct which gave rise to a risk to the public. In addition, it had found the wider public interest in maintaining public confidence was engaged, due to this risk and the seriousness of the misconduct. The panel decided that it would be incompatible with its earlier findings and the imposition of a Removal Order to conclude that an Interim Suspension Order was not necessary for the protection of the public or otherwise in the public interest for the appeal period. It determined that an interim suspension order was necessary for the protection of the public, and any lesser restriction would not be appropriate.
170. Accordingly, the panel concluded that an Interim Suspension Order should be imposed on public protection and the wider public interest grounds. It determined that it is appropriate that the Interim Suspension Order be imposed for a period of 18 months to cover the appeal period. When the appeal period expires this Interim Order will come to an end unless there has been an application to appeal. If there is no appeal the Removal Order shall apply when the appeal period expires.

Right of Appeal

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

Review of final orders

5. Under paragraph 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:
 - 15 (2) – The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the social worker.
 - 15 (3) A request by the social worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.
6. Under rule 16 (aa) of Social Work England's fitness to practise rules, a registered social worker requesting a review of a final order under paragraph 15 of Schedule 2 must make the request within 28 days of the day on which they are notified of the order.