

Social Worker: Rodrigue Ekwelle-
Nkwelle
Registration Number: SW109206
Fitness to Practise:
Final Hearing

Date(s) of hearing: Monday 03 October 2022 – Wednesday 05 October 2022

Hearing Venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim order suspension order – 18 months

Introduction and attendees

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

Adjudicators	Role
Jane Everitt	Chair Adjudicator
Glenys Ozanne-Turk	Social Work Adjudicator
Bridget Makins	Lay Adjudicator

Robyn Watts	Hearings Officer
Camilla Read	Hearings Support Officer
Paul Moulder	Legal Adviser

Service of Notice:

4. The panel of adjudicators (“the panel”) was informed by Ms Adeyemi that notice of this hearing was sent to Mr Ekwelle-Nkwelle by email on 04 August 2022 and by recorded delivery on 02 September 2022 to his email and postal addresses respectively on the Social Work Register (“the Register”). Ms Adeyemi submitted that notice of this hearing had been duly served.
5. The panel had careful regard to the documents contained in the final service bundle as follows:
 - A copy of the notice of the final hearing dated 04 August 2022 and addressed to Mr Ekwelle-Nkwelle at his address as it appears on the Social Work England Register
 - An extract from the Social Work England Register detailing Mr Ekwelle-Nkwelle’s registered email and postal addresses
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 04 August 2022 the writer instructed a third party to send by email the Notice of Hearing and notice of representation
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 02 September 2022 the writer sent by special delivery the Notice of Hearing and notice of representation
 - A copy of the Royal Mail Track and Trace Document indicating “signed for” delivery to Mr Ekwelle-Nkwelle’s registered address at 12:16 on 03 September 2022

6. The panel accepted the advice of the legal adviser in relation to service of notice. The panel took into account that Notice of the Hearing had been served by email on 04 August 2022, which gave considerable notice of the hearing. The panel noted that there were limitations on Mr Ekwelle-Nkwelle's ability to access the internet, which he either had to do in a public place or having sought specific permission. The panel considered that this might affect his ability to receive and open emails. It noted that Social Work England would have been aware of this limitation and therefore, the panel decided to consider in particular the matter of service by post.
7. The panel took into account that, at least 28 calendar days' notice had been given using postal service even though only 14 days' notice was required in this case. This was sufficient under both Rule 14(a) and 14(b) of Social Work England's Fitness to Practise Rules (2019) (as amended) ("the Rules"). The panel noted that the Notice of Hearing letter complied with Rule 15(a) but did not enclose a copy the Statement of Case, as required by Rule 15(b).
8. The panel took into account that it had been provided with a copy of an email dated 04 May 2022 from Capsticks to Mr Ekwelle-Nkwelle which enclosed a draft statement of case and other documentation. The email also referred to the same documents having been posted to Mr Ekwelle-Nkwelle at that time. The panel heard submissions from Ms Adeyemi that Mr Ekwelle-Nkwelle was well aware of the allegations and had responded to the regulatory concerns. Copies of his responses were provided in the papers before the panel.
9. The panel decided that the central issue was fairness to both parties. It bore in mind its general powers to regulate its own proceedings, set out in Rule 32(a). It took into account that Mr Ekwelle-Nkwelle was informed in the Notice letter of his right to request further information and also the means of contacting Social Work England to ask for more information. The requirement to inform Mr Ekwelle-Nkwelle of the date, time and place for the hearing had been complied with. He had been previously sent the draft statement of case. The panel decided that, despite the technical breach of Rule 15(b), it was fair to regard Service of Notice of the Hearing as having been complied with.
10. Having regard to 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 Ekwelle-Nkwelle sufficiently to comply with Rules 14, 15, 44 and 45.

Proceeding in the absence of the social worker:

11. The panel heard the submissions of Ms Adeyemi on behalf of Social Work England. Ms Adeyemi submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Mr Ekwelle-Nkwelle and as such there was no guarantee that adjourning today's proceedings would secure his attendance.
12. Ms Adeyemi further submitted that the allegations were extremely serious and went to the heart of the profession. Ms Adeyemi said that there was a public interest in dealing with the case quickly and expeditiously and the public interest outweighed Mr Ekwelle-Nkwelle's interests. She therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
13. 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 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.
14. The panel considered all of the information before it, together with the submissions made by Ms Adeyemi on behalf of Social Work England. The panel considered that the allegations were very serious and raised serious public protection issues. There was a public interest in hearing the matter expeditiously. There had been no apparent engagement with Social Work England by Mr Ekwelle-Nkwelle since February 2021. There had been no request for an adjournment made known to the panel. It noted that Mr Ekwelle-Nkwelle had been sent notice of today's hearing and the panel was satisfied that he was or should be aware of today's hearing. Social Work England had arranged the attendance of its witness of fact.
15. The panel concluded that there was no reason to believe that an adjournment would result in Mr Ekwelle-Nkwelle's attendance. Having weighed the interests of Mr Ekwelle-Nkwelle 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 Ekwelle-Nkwelle's absence.

Allegation

Whilst registered as a social worker:

1. *On 27 April 2021 you were convicted of Distribution of a Category A Indecent Image of a Child contrary to Section 1 (1) (b) and 6 of the Protection of Children Act 1978 and Possession of Extreme Pornographic Images contrary to Section 63 (1), (7)(d) and 67(3) of the Criminal Justice and Immigration Act 2008.*
2. *You did not declare, as required, to your employment agency – HCL Workforce that you had a previous allegation of sexual misconduct raised against you.*
3. *Your conduct at regulatory concern 2 was dishonest.*

The matter outlined in allegation 1 amounts to the statutory ground of conviction or caution.

The matters outlined in allegations 2 and 3 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your conviction or caution and/or misconduct.

Summary of Evidence

Background

16. Mr Ekwelle-Nkwelle was registered as a social worker, following completion of his degree course in 2015. He was first engaged as a social worker with Wiltshire Council (“WCC”) between March 2016 to October 2017. He later became a locum social worker registered with the agency HCL Workforce (“HCL”). He was placed with South Gloucestershire Council (“SGCC”) from 30 October 2017 to 30 September 2020. In October 2017, Mr Ekwelle was placed with the SGCC Access and Response Team, which was part of Children’s Services.
17. On 28 September 2020, SGCC received information from Avon and Somerset Police (“the Police”) that it had received a referral from the National Crime Agency (“NCA”). The NCA provided information that an Instagram account associated with Mr Ekwelle’s email address had uploaded an inappropriate video of children to the internet on 07 June 2020. SGCC shared this information with HCL at an Allegations Management Meeting in September 2020.
18. It was also alleged that Mr Ekwelle-Nkwelle failed to disclose to HCL, during its application, vetting and registration process, a previous allegation of sexual misconduct raised against Mr Ekwelle-Nkwelle in October 2013. This issue came to light in a meeting between SGCC and HCL on 30 September 2020. The allegation had been that Mr Ekwelle-Nkwelle had made sexual advances towards a female service user who had mental health problems. The Police had taken no further action as the complainant did not wish to support any Police investigation. HCL referred the matter to Social Work England on 11 January 2021 and Social Work England’s investigation of both matters followed.

Evidence on behalf of Social Work England

19. Social Work England relied on the evidence of Mr A, Division Head for Social Care at HCL. He gave evidence that he had been Mr Ekwelle-Nkwelle’s contact during the time he worked for HCL, which was from 10 October 2017 to 30 September 2020.

20. Mr A stated that Mr Ekwelle-Nkwelle had first contacted HCL in July 2017. He stated that Mr Ekwelle-Nkwelle made no mention of any previous investigations against him in his initial discussion with Mr A and there were no notes on file of Mr Ekwelle-Nkwelle having made a disclosure of the allegation from 2013.
21. Mr A stated that HCL in addition had a formal vetting process. He exhibited notes made by a colleague of a meeting of Mr Ekwelle-Nkwelle with HCL's Compliance Officer, in the course of the vetting process. He stated that no mention had been made then relating to previous allegations or investigations.
22. Mr A also gave evidence that, as part of the application and vetting process, Mr Ekwelle-Nkwelle completed a Registration Form, which Mr A exhibited. Mr A referred to the section of the form where the applicant was asked if they had "any DBS disclosures", if they had been suspended from a previous job or there are "any previous police enquiries". He stated that Mr Ekwelle-Nkwelle had answered "no" to all of these.
23. Mr A gave evidence that HCL had received three references for Mr Ekwelle-Nkwelle, including from his university, from a trust where he had worked and also from "WCC". None of these raised issues about investigations. He stated that HCL first became aware of the NCA information concerning Mr Ekwelle-Nkwelle during an Allegations Management Meeting he attended with SGCC on 30 September 2020. He exhibited the notes from the meeting. In addition, he stated, he was also made aware of the previous investigation from 2013.
24. In oral evidence, Mr A was asked whether, in his opinion, Mr Ekwelle-Nkwelle ought to have declared the previous allegation from 2013 to HCL, which had not resulted in any action being taken. He stated that "*based on the wording* [of the question on the Registration Form] *I would say 'no'*". However, he told the panel that he had no knowledge that Mr Ekwelle-Nkwelle had been suspended in 2013. He said that, if Mr Ekwelle-Nkwelle had been subject to a suspension, Mr A would have expected him to have answered this question "Yes".
25. Social Work England also relied on the witness statement of Ms Chambers, a Capsticks paralegal. She was not called to give oral evidence but exhibited to her witness statement a number of documents, including a summary of the investigation from the Police and an Incident Disclosure Report. The panel was also provided with the Certificate of Conviction ("Certificate"), Pre-Sentence Report ("PSR") and Sentencing Remarks of the Crown Court Judge in connection with the convictions.

Evidence on behalf of the Social Worker

26. Mr Ekwelle-Nkwelle did not attend the hearing and had not provided any written submissions specifically to the panel. However, the panel was provided with a copy of his responses in February 2021 to the regulatory concerns and took these into account.
27. Mr Ekwelle-Nkwelle stated in his responses that he accepted the “*two regulatory concerns*”. He said the videos had been sent to him randomly and not by his request. He said that when he had distributed the video it had been to decry some of the “ill things” that were occurring in Africa and Cameroon in particular, from where Mr Ekwelle-Nkwelle came.
28. Mr Ekwelle-Nkwelle expressed his total shame of himself, the shame he had brought on his family and his profession. He said that he understood that he ought to have reported the matter to the Police. He said it was poor judgement, not to have promptly reported the matter, because it was from Cameroon. He would report any similar in the future but had removed himself from all social media indefinitely.
29. Mr Ekwelle-Nkwelle stated that he had not been involved in any social work since 30 September 2020. He said that he accepted that his fitness to practise was impaired due to the concerns raised and added “*but I would like to categorically stress that, I am not a person will hurt any individual, not to talk of a child*”.
30. Mr Ekwelle-Nkwelle stated that he had fled his country and claimed asylum in the UK due to numerous adversities he had faced in Cameroon including being “*sexually abused, dehumanised and continuous marginalisation as well as massive inequality*”. He said he knew becoming a social worker was the best way to repay the UK. As a result he felt very down about the situation he had put himself in. Mr Ekwelle-Nkwelle pleaded for forgiveness and said he would be willing to work with and adhere to everything decided.
31. The panel bore in mind the above statement and took it into consideration.

Finding and reasons on facts

32. The panel heard and accepted the advice of the legal adviser. He advised the panel that the burden of proof of the facts, including the allegation of dishonesty, lay on Social Work England to prove on the balance of probabilities. The panel took this into account and that Mr Ekwelle-Nkwelle did not have a burden to prove he was innocent of any misconduct. The legal adviser advised the panel as to Rule 35A and that the panel was entitled to take into account the Certificate, but also the relevant findings of fact and, per Rule 35A (3), any other evidence pertaining to the conviction which may be considered as sufficient proof of the conviction.

Paragraph 1

1. *On 27 April 2021 you were convicted of Distribution of a Category A Indecent Image of a Child contrary to Section 1 (1) (b) and 6 of the Protection of Children Act 1978 and Possession of Extreme Pornographic Images contrary to Section 63 (1), (7)(d) and 67(3) of the Criminal Justice and Immigration Act 2008.*

33. In relation to paragraph 1, the panel took into account the Certificate (of Conviction) provided in the evidence bundle, together with the short PSR and the Sentencing Remarks.
34. The panel noted that the allegation in paragraph 1 was set out in terms which were similar to the Certificate but contained certain differences in relation to the first conviction. However, the PSR and Sentencing Remarks clarified that this first conviction had related to a 'Category A' indecent image, as set out in paragraph 1 of the Allegation.
35. The panel requested and received further clarification concerning the statutes set out in paragraph 1. It was confirmed in an email to Social Work England from Avon and Somerset Police that the convictions related to the respective statutory sections which had been set out in paragraph 1 of the Allegation.
36. The panel took into account that, in his responses from February 2021, Mr Ekwelle-Nkwelle accepted the fact of his convictions and sought to explain and apologise for them. The panel bore in mind that, despite what Mr Ekwelle-Nkwelle said about the convictions, it could not go behind the convictions themselves or the supporting facts.
37. Having taken all the relevant evidence into account, the panel decided that the facts set out in paragraph 1 of the Allegation were supported by a combination of the Certificate, the PSR and Sentencing Remarks and the email from Avon and Somerset Police. The panel found paragraph 1 proved.

Paragraph 2

2. *You did not declare, as required, to your employment agency – HCL Workforce that you had a previous allegation of sexual misconduct raised against you.*

38. In relation to paragraph 2, the panel accepted advice that it had to be satisfied both that (a) Mr Ekwelle-Nkwelle had not declared the previous allegation of sexual misconduct and (b) that he had been required in the circumstances to do so at the time.
39. The panel accepted the evidence of Mr A that Mr Ekwelle-Nkwelle had not declared the allegation to HCL. His evidence was supported by the exhibits provided by Mr A, including the Registration Form and his colleagues' notes, where direct questions as to such matters had been answered in the negative by Mr Ekwelle-Nkwelle. The evidence was also supported by the notes of the Allegations Meetings.

40. The panel next considered whether, in the circumstances, there had been a requirement on Mr Ekwelle-Nkwelle to have declared the allegation. It took into account that Mr A had stated that he would have expected a declaration, if Mr Ekwelle-Nkwelle had been suspended at the time.
41. Although Mr A's evidence was that he did not believe that Mr Ekwelle-Nkwelle had been suspended, the panel had before it evidence from the Police, in an email dated 02 December 2021 from the officer involved and from the Incident Disclosure Report dated 10 October 2013 that Mr Ekwelle-Nkwelle had been suspended during the investigation. As the notes in the Incident Report Form in particular were relatively contemporaneous notes, the panel considered that these were reliable. The panel took into account that the allegation had been serious in nature. The panel concluded it was more likely than not that Mr Ekwelle-Nkwelle had been suspended from his work placement at the time.
42. The panel took into account that the questions asked in the Registration Form were broad in scope. For example, in 'Section 5: Investigations/Suspensions' question 2 asked: *"Have you been suspended/terminated/had restrictions placed on your practice from employment/organisations or Professional Regulatory Body(s) in the UK or any other country?"* to which the recorded answer was *"No"*.
43. In 'Section 7: Criminal Record Check', question 4 asked: *"Are you aware of any previous, current or pending investigations, police enquiries or legal proceedings following allegations made against you (in the UK or any other country)?"*. The answer given was again *"No"*.
44. In the panel's view, these questions had to be taken in the context of application that Mr Ekwelle-Nkwelle was making for potential employment as a social worker. It bore in mind the following HCPC Standards of Conduct, Performance and Ethics (2016) which had applied at the time, specifically:
- "9.1 – You must make sure that your conduct justifies the public's trust and confidence in you and your profession"*
45. The panel noted that, in his written communications in February 2021 with Social Work England Mr Ekwelle-Nkwelle did not appear directly to address this paragraph 2 of the Allegation.
46. The panel bore in mind evidence that the police had not investigated the matter, because the complainant had not wished to take the matter further. No further action had been taken and Mr Ekwelle-Nkwelle had been allowed to resume his course.
47. However, the panel balanced this with the apparent seriousness of the matter, and the suspension of Mr Ekwelle-Nkwelle pending the internal investigation. It concluded that, in all the circumstances, Mr Ekwelle-Nkwelle ought to have brought the matter to the

attention of HCL. In particular, it considered the issue came within the scope of Section 5 and Section 7 above. The panel decided that Mr Ekwelle-Nkwelle did not, but had been required to, declare the allegation to HCL.

48. The panel found paragraph 2 proved.

Paragraph 3

3. *Your conduct at regulatory concern 2 was dishonest.*

49. The panel next considered paragraph 3 of the Allegation. It accepted the advice of the legal adviser that the test of dishonesty to be applied was that set out in *Ivey v Genting Casinos* [2017] UKSC 62. The panel should first make findings as to the actual state of the individual's knowledge or belief as to the facts, then the question of dishonesty was to be determined by the panel by applying the (objective) standards of ordinary decent people.

50. The panel decided that Mr Ekwelle-Nkwelle would have been aware of his suspension at the time, and the internal investigation. The panel considered that Mr Ekwelle-Nkwelle would have been well aware of the nature of the roles for which he was seeking employment with HCL and the issues around the vulnerability of service users.

51. In light of that knowledge, the panel then considered how ordinary decent people would regard Mr Ekwelle-Nkwelle's failure to declare the allegation from 2013, when applying to HCL. It considered that ordinary decent people would expect Mr Ekwelle-Nkwelle to be candid, and that he would have also been able to state that no further action had resulted. It also considered that such people would regard that a failure to declare the previous allegation was below the standard of honesty and therefore was dishonest conduct.

52. The panel found paragraph 3, which relates to paragraph 2, proved.

Finding and reasons on grounds

53. The panel had found the convictions set out in paragraph 1 of the Allegation proved. This was sufficient in itself to establish the statutory ground for potential impairment, which would be considered at the next stage.

54. The panel therefore went on to consider its findings in relation to paragraphs 2 and 3 and whether they amounted to misconduct.

55. Ms Adeyemi submitted that, in relation to the convictions, there was no need for the panel to consider misconduct, however, it was relevant for the panel to consider that the facts underlying the convictions showed a breach of fundamental standards for social workers.

56. In respect of paragraphs 2 and 3 of the Allegation, Ms Adeyemi submitted that the panel had to be satisfied that there had been a serious falling short of expected standards, in order for it to find misconduct. She submitted that the panel's findings related to conduct which fell far short and had been dishonest.
57. Ms Adeyemi said that the allegation which had not been declared had concerned sexual misconduct and it had allegedly taken place in the work environment. The response of temporary suspension of Mr Ekwelle-Nkwelle showed the matter had been taken seriously.
58. Although the evidence had revealed some doubt on the part of others as to whether a declaration had been required, Ms Adeyemi submitted, those others did not have the full picture and their opinion did not detract from the seriousness of the conduct by Mr Ekwelle-Nkwelle, nor the dishonesty.
59. Ms Adeyemi submitted that it is well-known that social workers have to act with integrity. Members of the public consider social workers to have a lot of power and acting without integrity greatly undermined the trust and public view of social workers.
60. Ms Adeyemi submitted that there had been serious misconduct. She said Mr Ekwelle-Nkwelle had been subject to duties to act honestly and to be trustworthy, open and accurate. These issues were relevant to misconduct, she said.
61. The legal adviser advised the panel that, in relation to paragraphs 2 and 3 the first question was whether the panel's findings amounted to the statutory ground of misconduct. It should consider its findings and determine whether the misconduct amounted to serious professional misconduct. There was no burden of proof in this respect, but it was a matter for the panel's judgement. He advised that misconduct had been described as a falling short of what was proper in the circumstances. This could be judged by reference to the appropriate professional standards of conduct for the profession. It could also involve conduct of a morally reprehensible kind which may bring disgrace on the profession.
62. The panel considered the professional standards which had applied at the relevant time. In relation to the HCPC Standards of Conduct and Ethics (2016) the panel noted the following:
- "1. Promote and protect the interests of service users and carers*
- 8.1 - You must be open and honest when something has gone wrong with the care, treatment or other services that you provide...*
- 9.1 – You must make sure that your conduct justifies the public's trust and confidence in you and your profession"*

63. The panel considered that Mr Ekwelle-Nkwelle had put his own interests ahead of the prospective service users with whom he would work, by concealing from HCL the previous allegation from 2013. Although there had been no finding in relation to that allegation, he had prevented HCL from assessing the risks by not declaring the matter.

64. The panel considered that the following from the Standards of Proficiency (2017) were also relevant:

“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, promote and prioritise the wellbeing of children, young people and vulnerable adults

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

65. The panel considered that Mr Ekwelle-Nkwelle’s misconduct did not promote service users interests, risked prejudicing their safeguarding and represented a failure on his part to maintain high standards.

66. The panel considered that, even though there had been no eventual finding, the allegation of sexual misconduct had been a serious one. Mr Ekwelle-Nkwelle had been temporarily suspended pending the internal investigation. He had not put his position up for scrutiny by HCL.

67. In addition, the panel had found this misconduct to be dishonest. It noted paragraph 109 of the Sanctions Guidance (“SG”) issued by Social Work England, which stated:

“109. Dishonesty through misrepresenting qualifications, skills and experience, for example on a CV, is also particularly serious because it may lead to the social worker being appointed to roles and responsibilities that they cannot safely discharge. The public and employers must be able to trust the accuracy of such information provided by social workers. “

68. The panel considered the dishonesty in this case was similar in effect to the examples given in paragraph 109 and that the dishonest failure to declare the allegation of sexual misconduct which it had found in paragraphs 2 and 3 amounted to serious professional misconduct by Mr Ekwelle-Nkwelle.

Finding and reasons on current impairment

69. Having found misconduct, as a statutory ground and the convictions proved, the panel went on to consider whether these demonstrated that Mr Ekwelle-Nkwelle’s fitness to practise is currently impaired.

70. Ms Adeyemi submitted that it was a matter for the panel's judgement whether Mr Ekwelle-Nkwelle's fitness to practise is currently impaired. She submitted that his failings were central to the heart of social work. She said that social workers were expected to be at the forefront of protection of the public and should have a clear understanding of what amounted to harm.
71. Ms Adeyemi submitted whilst Mr Ekwelle-Nkwelle had expressed remorse, he gave no real information as to his understanding of the implications of his behaviour. Whilst he acknowledged that distributing and possessing the images was wrong, he did not acknowledge how he had fuelled such behaviour and put children at risk of harm. She submitted that the author of the PSR had referred to Mr Ekwelle-Nkwelle's apparent naivety and the judge had considered the explanations about the pornographic images to be manifestly false and unbelievable. She said it was for the panel to reach its own judgements on Mr Ekwelle-Nkwelle's credibility.
72. Ms Adeyemi submitted that although Mr Ekwelle-Nkwelle had been ordered to undertake the 'MAPS' rehabilitative course as part of his sentence, there was no information that he had completed it and limited weight could therefore be placed on it as remediation.
73. Ms Adeyemi submitted that members of the public would be outraged if a social worker in Mr Ekwelle-Nkwelle's situation was allowed to continue in unrestricted registration. She submitted that Mr Ekwelle-Nkwelle's fitness to practise was impaired by reason of his conviction and misconduct.
74. The legal adviser advised the panel that the matter of impairment was for its own judgement. He advised the panel that it should consider the question of whether there was a risk of repetition of past misconduct and whether the public were at risk from Mr Ekwelle-Nkwelle repeating his behaviour. In addition, he advised the panel should consider that a finding of impairment can be justified in order to maintain public confidence and uphold proper standards for the profession.
75. The legal adviser drew the panel's attention to Mr Ekwelle-Nkwelle's sentence, which was a custodial sentence suspended for two years, together with a Sexual Harm Prevention Order for 10 years and liability to be made subject to a Barring Order. He reminded the panel of the court's judgment in *CHRE v GDC & Fleischmann* [2005] EWHC 87 (Admin) in which the court said:

"I am satisfied that as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise."

He said that the panel should consider this in conjunction with whether a finding of impairment was necessary in accordance with this principle.

76. The panel first considered the misconduct findings made in relation to paragraphs 2 and 3 of the Allegation. There had been a clear breach of the professional standards which had put potential service users at risk of harm, due to the lack of openness on the part of Mr Ekwelle-Nkwelle. The requirement of honesty was a fundamental tenet of the profession, as the Standards and the SG paragraph 108 made clear.
77. The panel considered what evidence it had as to whether Mr Ekwelle-Nkwelle had remediated his misconduct and whether it could be said to be highly unlikely that he would repeat it. The panel had no real information from Mr Ekwelle-Nkwelle concerning these parts of the Allegation, beyond a general expression of remorse. There were no insights from him about his reasons for non-disclosure or his understanding of the effects of it. The panel was therefore not satisfied that Mr Ekwelle-Nkwelle had undertaken sufficient remediation and would not repeat his past behaviour.
78. The panel also considered that this misconduct had created a risk to the public for the reasons set out in the misconduct finding and breached standards which required a finding of impairment in the wider public interest.
79. Turning to the convictions, the panel considered that these were convictions of a very serious nature. It was satisfied that children and animals are likely to have been harmed by their involvement in the images which Mr Ekwelle-Nkwelle had dealt with. It was alarmed at his suggestion that the fact that the images came from Cameroon affected his decision whether to disclose them.
80. The panel took into account that Mr Ekwelle-Nkwelle had expressed remorse and recognised that shame had been brought to himself, to his family and to the profession. It noted that Mr Ekwelle-Nkwelle had offered some explanation around the distribution conviction, but he had not explained the facts relating to the other conviction for possession of extreme pornography.
81. The panel noted that the author of the PSR had questioned the explanation put forward by Mr Ekwelle-Nkwelle of 'naivety' and the judge at the Crown Court had rejected his explanations. The panel considered that, as a social worker, Mr Ekwelle-Nkwelle ought to have had a higher understanding of the harm caused by the matters underlying these convictions. It noted the search terms said to have been used in relation to his search for images and regarded his explanation for searching with scepticism.
82. The panel considered that it had no demonstration of any insight from Mr Ekwelle-Nkwelle regarding the effect that engaging in the distribution and possession of such images has on the subjects of the material. Although it had been informed that Mr Ekwelle-Nkwelle had been required to undertake the MAPS course, the panel had no

information as to whether he had completed the course, or what he may have learnt from it.

83. In relation to the convictions, the panel concluded that, in the absence of demonstrated insight and remediation, there was a risk of repetition of past behaviour which involved a risk to the public. In addition, the panel was of the view that members of the public who were aware of Mr Ekwelle-Nkwelle's convictions and the underlying facts would be extremely shocked if there was no finding of impaired fitness to practise. Therefore, the panel considered that a finding of impaired fitness to practise was required in order to promote and maintain public confidence in the profession and to promote and maintain professional standards.
84. The panel also considered that, since Mr Ekwelle-Nkwelle has yet to complete his criminal sentence, it would be wrong to allow him to be in unrestricted practice, as the judgment in *Fleischmann* made clear.
85. The panel was concerned that there was a potential pattern of rule-breaking by Mr Ekwelle-Nkwelle in the Allegation.
86. The panel found that Mr Ekwelle-Nkwelle's fitness to practise is impaired.

Decision on sanction

87. The panel, having determined that Mr Ekwelle-Nkwelle'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.
88. Ms Adeyemi submitted that the purpose at this stage was to impose a sanction which protects the public and is sufficient to maintain confidence in the profession. She said that it was Social Work England's position that the only appropriate sanction was a removal order, because the seriousness of Mr Ekwelle-Nkwelle's conduct was wholly incompatible with being a registered social worker.
89. Ms Adeyemi submitted that there had been harm caused by the distribution and possession of the images. Mr Ekwelle-Nkwelle had demonstrated limited insight and provided no evidence of remediation. She submitted that the panel had not heard from Mr Ekwelle-Nkwelle what he might do differently in the future. Ms Adeyemi submitted that a risk of repetition had been found and there was a need to protect the public.
90. Ms Adeyemi reminded the panel that Mr Ekwelle-Nkwelle was still subject to his suspended custodial sentence and asked the panel to bear in mind the general principle in *Fleischmann* (see above). She submitted that Social Work England endorsed this principle, as referred to in the Sanctions Guidance ("SG").

91. Mr Ekwelle-Nkwelle had not attended the hearing, but the panel bore in mind when considering sanction at this stage his written responses to the regulatory concerns from February 2021.
92. 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 Ekwelle-Nkwelle's interests. It had to set out its reasons for any particular sanction which it imposed.
93. The panel bore in mind Social Work England's overarching objective is to protect the public, as set out in section 37 of the Children and Social Work Act 2017. The Act in s37(2) states:
- (2) The pursuit by the regulator of its over-arching objective involves the pursuit of the following objectives—*
- (a) to protect, promote and maintain the health, safety and well-being of the public;*
- (b) to promote and maintain public confidence in social workers in England;*
- (c) to promote and maintain proper professional standards for social workers in England.*
94. The panel carefully considered its findings of fact and its finding of current impairment of Mr Ekwelle-Nkwelle's fitness to practise. The findings of fact included his having been convicted in 2021 of two very serious offences, one of distribution of a Category A image of a child and one of possession of images of extreme pornography. He had received a custodial sentence as a result, although that had been suspended. He had been made the subject of a Sexual Harm Prevention Order and placed on the Sex Offenders Register, both for 10 years. The panel had found that harm had likely been caused to the subjects of the images.
95. The panel had also found proved an allegation of dishonest conduct in 2017, by failing to declare a matter relevant to his application for employment as a social worker, which the panel considered had materially hindered the agency in conducting a risk assessment on his application, for the protection of service users.
96. The panel acknowledged that it had been given no information as to other regulatory findings or concerns known against Mr Ekwelle-Nkwelle. He had expressed his remorse in his responses to the regulatory concerns, for himself, for his family and for the profession.
97. However, the panel considered that Mr Ekwelle-Nkwelle lacked insight. It had found that there was no demonstration of any insight from Mr Ekwelle-Nkwelle regarding the effect that engaging in the distribution and possession of such images has on the subjects of

the material. His expression of insight on the effect on the reputation of the profession of his conduct in relation to the convictions was very limited.

98. The panel noted that convictions for offences similar to the type in this case may result in removal, as the SG states at paragraph 105:

“105. Convictions for sexual assault or abuse of children through pornography are likely to require automatic removal of registration without adjudication.”

99. The panel noted the guidance in the SG regarding the matter of convictions. The convictions in this case did not engage automatic removal as ‘listed offences’, but the panel noted paragraph 18, as follows:

“18. Convictions that do not qualify for automatic removal may still warrant removal of registration depending on the nature of the offence, however the purpose of sanctions is not to punish a social worker twice for the same offence. Decision makers must assess the conviction against what sanction is needed to deliver the overarching objective of protecting the public including the wider public interest.”

Therefore, the panel was careful to consider what sanction was appropriate and proportionate to deliver protection of the public.

100. Dishonesty in social workers is also regarded as serious, as the SG states in paragraph 107:

“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.”

101. The panel bore in mind that it had found that there was a continuing risk to the public, arising from the conduct underlying the convictions and the previous dishonest conduct. It considered carefully paragraph 69 of the SG:

“69. Where the decision makers have determined that the social worker’s impairment poses a current risk to safety, it may be reasonable to move beyond no action, advice or warnings on this basis alone since these outcomes will not protect the public.”

No Action/Warning/Advice

102. The panel considered the sanctions in ascending order of seriousness. The panel first considered taking no action but considered that in light of the seriousness of the case and the continuing risk to the public, this would be entirely inappropriate. Likewise, the panel considered that to merely give advice or a warning would not meet the seriousness and not meet the overarching objective of public protection.

Conditions of Practice Order

103. The panel next considered imposing a conditions of practice order. It acknowledged that, as the SG states, the primary purpose of conditions of practice is to protect the public whilst the social worker takes any necessary steps to remediate.

104. The panel noted paragraph 85 of the SG:

“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.”

The panel considered that the convictions had much in common with the broad category of sexual misconduct and raised concerns over Mr Ekwelle-Nkwelle’s character and attitude. It was also dealing with a case involving proven dishonesty.

105. The panel also noted that imposing a conditions of practice order would potentially allow Mr Ekwelle-Nkwelle’s return to practice whilst still subject to his criminal sentence. This would conflict with the ‘general principle’ in *Fleischmann* (see above) and also the fact that the Sexual Harm Prevention Order (“SHPO”) imposed severe conditions on his ability to practice. The panel did not find that there were any exceptional circumstances to depart the application of the general principle expressed in *Fleischmann*. The panel had also been informed by Social Work England that Mr Ekwelle-Nkwelle had been made subject to a Barring Order, which would prevent him from working with vulnerable persons.

106. The panel took into account, however, that Mr Ekwelle-Nkwelle’s previous practice had involved working with children. The images in the first conviction related to a child and the panel considered that there were no workable conditions which would serve to adequately protect vulnerable service users, children or adults, in light of the current issues concerning Mr Ekwelle-Nkwelle’s character and attitude.

107. The panel also considered that imposing a conditions of practice order would not meet the level of seriousness of the misconduct and the convictions and therefore would not be sufficient to protect the health, safety and wellbeing of the public, promote and maintain public confidence and promote and maintain standards.

Suspension Order

108. The panel therefore next considered a suspension order, noting that it had power to suspend Mr Ekwelle-Nkwelle’s registration for up to three years. It considered 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.”

109. The panel noted that, for the period of suspension, Mr Ekwelle-Nkwelle would be entirely removed from practice and that this would provide a measure of public protection.
110. However, the panel considered that it was clear from the SG that suspension, in part, was for the purpose of allowing a period for the social worker to rehabilitate and return to practice. The panel had found that Mr Ekwelle-Nkwelle lacked insight into his convictions and misconduct. There had also been a finding of dishonest misconduct. The panel had also found that there was a continuing risk to the public and wider public interest concerns were also engaged.
111. In addition, the panel noted that, even after the end of a suspension order if made, Mr Ekwelle-Nkwelle would still be subject to the SHPO and entry on the Sex Offenders' Register, which had both been imposed for 10 years. Also, he may be still subject to a Barring Order. These matters all indicated, together with consideration of the 'general principle' in *Fleischmann*, that suspension, even for the maximum term, may be insufficient.
112. The panel was of the view that the public would be extremely alarmed to learn that a person who had been convicted of offences of this nature was allowed to remain on the register, with potential to return, even after a period of three years.
113. The panel concluded that the conduct underlying the convictions together with the dishonest misconduct was fundamentally incompatible with being registered as a social worker. The matters of distribution of an indecent image of a child and possession of the pornographic images went entirely against the fundamental tenets of the profession and its purposes in protecting the public.
114. The panel concluded that a suspension order was not sufficient to protect the health, safety and well-being of the public, nor to promote and maintain public confidence, nor to promote and maintain proper professional standards.

Removal Order

115. The panel noted paragraph 98 of the SG, as follows:

“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.”

116. The panel determined that, for the reasons given above, no lesser sanction than removal of Mr Ekwelle-Nkwelle’s registration would be appropriate in all the circumstances of the case. It acknowledged that this will deprive Mr Ekwelle-Nkwelle of his career as a social worker and is likely to have financial and reputational effects on him. However, the panel decided that the interests of public protection and the reputation of the profession outweighed his interests. Therefore, the proportionate order is a removal order.

117. The panel determined to make a removal order.

Interim order

118. In light of its findings on Sanction, the panel next considered an application by Ms Adeyemi for an Interim Suspension Order to cover the appeal period before the Sanction becomes operative.

119. Ms Adeyemi submitted that her application was based on the reputational and public interest considerations. An interim order was proportionate, given the concerns identified. A period of 18 months was reasonable, due to the time it would take to dispose of an appeal.

120. The panel had found that there was a continuing risk to the public and that the wider public interests were engaged. It concluded that an interim order was necessary for protection of the public and in the wider public interest of maintaining public confidence in the profession and proper professional standards.

121. The panel considered that it would be incompatible with its earlier findings and the imposition of a Removal Order to conclude that an interim order was not necessary to cover the appeal period.

122. The panel noted that it had power to impose an interim conditions of practice order or an interim suspension order. However, it had previously found conditions of practice were not sufficient to protect the public. Therefore, the panel decided that nothing less than an Interim Suspension Order was necessary.

123. Accordingly, the panel concluded that an Interim Suspension Order was necessary to protect the public, including the wider public interests. The panel determined that the Interim Suspension Order should be imposed for 18 months, to allow it to cover the period within which an appeal may be brought and also to allow for the time before an appeal is heard, if an application to appeal is made.

124. When the appeal period expires, this Interim Order comes 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

125. 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.

126. 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.

127. 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.

128. 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

129. 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.

130. 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.