

# Social Worker: Janette Ann Francis

## Registration Number: SW69618

### Fitness to Practise:

### Final Hearing

Dates of hearing: Monday 12 to Wednesday 14 December 2022

Hearing Venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order for 18 months

#### Introduction and attendees

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (the Regulations).

2. Ms Janette Francis did not attend and was not represented.
3. Social Work England was represented by Mr Adrian Harris, as instructed by Capsticks LLP.

| Adjudicators     | Role                      |
|------------------|---------------------------|
| Kerry McKevitt   | Chair                     |
| Rosemary Chapman | Social Worker Adjudicator |
| Jane Dalton      | Lay Adjudicator           |

|              |                         |
|--------------|-------------------------|
| Paul Harris  | Hearings Officer        |
| Camilla Read | Hearing Support Officer |
| Rachel Birks | Legal Adviser           |

#### Service of Notice:

4. Ms Francis did not attend the hearing and was not represented. The panel of adjudicators (the panel) was informed by Mr Harris that notice of this hearing was sent to Ms Francis at her address on the Social Work England Register on 31 October 2022. He stated that this letter gave the required 28 calendar days' notice of the hearing as required by rule 14 of the Fitness to practise rules (as amended) (the rules), and contained the information required by rule 15. This letter was returned to sender on 11 November 2022, but Mr Harris submitted that the rules required proof of sending and not proof of receipt.
5. Mr Harris submitted that the notice of this hearing has been duly served.
6. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
  - a. An extract from the Social Work England Register showing Ms Francis's registered address;
  - b. A Royal Mail Special Delivery letter that was sent to Ms Francis at her address on the Social Work England Register on 12 October 2022. This letter disclosed Social Work England's draft statement of case, exhibits and statements bundle and hearing timetable. This letter had a main heading which referred to the hearing dates of 12-16 December 2022. It was collected from the Royal Mail Delivery Office on 17 October 2022 and signed for by 'Francis';

- c. An attendance note from 18 October 2022 when Ms Francis spoke to Capsticks by telephone and informed them that she cannot accept service by email as she is without internet at present.
  - d. A copy of the Notice of Hearing dated 31 October 2022 sent to Ms Francis at her address on the Social Work England Register;
  - e. A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 31 October 2022 the writer instructed Docucentre to send the final notice of hearing to Ms Francis at her registered address.
7. The panel accepted the advice of the legal adviser in relation to service of notice.
8. Having had regard to rules 14, 15 and 44 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 Ms Francis in accordance with the rules.

### Proceeding in the absence of the social worker:

9. The panel heard the submissions of Mr Harris on behalf of Social Work England. Mr Harris submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Ms Francis and, given that she has stated that she does not wish to attend the hearing or hear anything further from Social Work England, adjourning today's proceedings would be highly unlikely to secure her attendance. Mr Harris submitted that Ms Francis has voluntarily absented herself from this hearing, in that her non-attendance is deliberate and consistent with her settled view that she does not wish to attend.
10. Mr Harris reminded the panel that a balancing exercise was required in determining whether to exercise its discretion to proceed in the absence of Ms Francis. This involved consideration of:
- a. fairness to Ms Francis;
  - b. fairness to the regulator; and
  - c. the overarching requirement of protection of the public.
11. Mr Harris therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
12. 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:
- a. Rule 43 which provides that where the registered social worker does not attend a hearing and is not represented, the panel may proceed to determine the matter, if they are satisfied that the registered social worker has been served or that all

reasonable efforts have been made to serve the registered social worker with notice of the hearing in accordance with the rules.

- b. The case of *Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34*, which confirms that the decision to proceed with a hearing in the absence of a practitioner is a discretion which a panel should exercise with the utmost care and caution. The factors which a panel must bear in mind when deciding whether to exercise their discretion to proceed are those as set out in the case of *R v Jones (Anthony) [2003] AC 1, HL*. These include:
    - i. The nature and circumstances of the registrant's behaviour in absenting themselves from the hearing;
    - ii. Whether the registrant has voluntarily absented themselves from the proceedings;
    - iii. Whether an adjournment would resolve the registrant's absence;
    - iv. If so, the likely length of any such adjournment;
    - v. The disadvantage to the registrant in not being able to present their case.
  - c. The case of *Adeogba v GMC [2016] EWCA Civ 162* which draws a distinction between criminal and disciplinary proceedings in terms of the procedure to be followed when deciding on whether to proceed in the absence of the registrant. Key features of that judgement are:
    - i. The GMC was to be guided by the context of its main statutory objective, and in that regard the fair, economical, expeditious and efficient disposal of the allegations made against a medical practitioner is of very real importance;
    - ii. Fairness involves fairness both to the registrant, which is the prime consideration, but also fairness to the regulator and to the public;
    - iii. GMC was perfectly entitled and indeed bound to use the address provided on the practitioner's registration;
    - iv. The registrant knew that disciplinary proceedings were ongoing and made no attempt to contact the GMC so that he could be apprised of what was going on;
    - v. There was no reason for the registrant not to participate in the hearing.
13. The panel considered all of the information before it, together with the submissions made by Mr Harris on behalf of Social Work England. The panel noted that Ms Francis had been sent notice of today's hearing. Her absence is consistent with her telephone conversation with Capsticks on 12 October 2022 during which she stated that:
- a. she has not paid her Social Work England registration as she is retired and is not going to practise,

- b. she is aged 68 years and a full-time carer for her mother on Mondays to Fridays;
  - c. she will not be attending and she has no evidence to offer or to comment on.
14. The panel, therefore, concluded that Ms Francis has voluntarily chosen to absent herself from this hearing, which is consistent with her lack of engagement with the Social Work England investigation. She has not demonstrated any intention or desire to appear at this hearing in order to defend herself against the allegations. She has specifically requested that Social Work England cease sending her correspondence. The panel determined that it was highly unlikely that an adjournment would result in her attendance.
15. The panel considered that Ms Francis will be disadvantaged by her non-attendance as she will be unable to put forward her own account. However, she is aware that proceedings are ongoing and Social Work England cannot compel her to attend. There are three witnesses ready to give oral evidence at this hearing and, as the allegations date back to 2019, it is likely that any adjournment could negatively impact witness recollection. Having weighed the interests of Ms Francis in regard to her attendance at the hearing with those of Social Work England and the public interest in a fair, economical, expeditious and efficient disposal of this hearing, the panel determined to proceed in Ms Francis's absence.

## Allegations

16. The allegations in this case are as follows:
- 1. Whilst registered as a Social Worker, in respect of a Connected Person Main Form, you:
    - a. Recorded that Referee 1 had been visited by you on 17 January 2019;
    - b. Recorded that Referee 2 had been visited by you on 17 January 2019;
    - c. Implied that you had spoken to Referee 1 and/or Referee 2 personally at a home visit;
    - d. Recorded that Referee 1 and/or Referee 2's references had been confirmed at those home visits;when this was not true.
  - 2. Your conduct at paragraph 1 above was dishonest.

## Summary of Evidence

17. The panel received the following evidence:

- a. Social Work England submitted the following evidence (written and oral):
  - i. HS, a group manager for the fostering and adoption teams at [PRIVATE] Council;
  - ii. RW, school effectiveness service assessment lead at [PRIVATE] Council;
  - iii. Referee 1;
- b. Ms Francis did not attend and did not provide any witness statements for consideration.

## Findings and reasons on facts

18. The panel accepted and applied the advice of the legal adviser, namely that:

- a. The burden of proving the facts is with Social Work England;
- b. Ms Francis's written communications with Social Work England can and should be taken into account, but the panel should bear in mind that it has not been able to test her assertions in oral evidence. This might impact the weight the panel gives to her denials;
- c. The civil standard of proof is the applicable standard, sometimes referred to as being satisfied on the balance of probabilities;
- d. The panel should consider the entirety of the evidence received, both written and oral and consider the reliability, accuracy and credibility of the evidence and decide what weight to attach to each piece of evidence that goes to each of the allegations;
- e. In relation to dishonesty the panel should follow the approach set out in the case of *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67* and approved as the approach in regulatory cases.

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

f. Social Work England has put forward evidence of what Referee 2 said about whether Ms Francis had spoken to him. This was not in the form of direct evidence from him, either in the form of a written statement or oral evidence, but was given as part of the [PRIVATE] Council investigation conducted by Ruth Wells. This is hearsay evidence which means it is a statement, not put forward in oral evidence, to prove that Ms Francis did not speak to Referee 2. The panel are able to admit such evidence as rule 32(b)(vii) provides that the panel may admit evidence where they consider it fair to do so, whether or not such evidence would be admissible in a court of law. However, it is a matter for the panel what weight it decides to attach to that evidence. In considering what weight to attach the panel will need to consider the accuracy, reliability and credibility of the evidence that has been and in doing so should take into account:

- i. The source of the information;
- ii. The way in which the information has been obtained, clarified and recorded;
- iii. The extent to which it is consistent with other evidence or admissions.

19. The panel made the following findings on facts:

**1. Whilst registered as a Social Worker, in respect of a Connected Person Main Form, you:**

**a. Recorded that Referee 1 had been visited by you on 17 January 2019;**

**FOUND PROVED**

20. HS confirmed in her evidence that Ms Francis was allocated the case of Applicant 1 and Applicant 2 on 17 October 2018, and that the assessment had been started only four weeks previously so was at an early stage. She confirmed that written references had been requested and part of Ms Francis's role was to conduct an assessment of the potential carers. This included visiting the referees to verify their references, and conducting a more detailed discussion about their references and their knowledge of the family.

21. The panel heard that Schedule 3(12) of The Fostering Services (England) Regulations 2011 provides that when assessing foster carers, the details of two referees must be sought but that this statutory requirement is often supplemented by the local authority also seeking a reference from a family member in addition to the personal references.

22. The panel had sight of the completed 'Connected Person Main Form'. Section C includes details of personal references, where Ms Francis has indicated immediately above her

signature 'Ms [Referee 1] Dated 13/10/18 Conformed [sic] at a home visit 17/01/19'. Ms Francis, in addition to signing that page, has entered the date of 14 February 2019.

23. The panel considered this to be a clear indication that Ms Francis had recorded that Referee 1 had been visited by her on 17 January 2019. This was also consistent with Ms Francis's written assertions that she had carried out the visit which is why it was recorded.
24. The panel therefore found allegation 1(a) proved.

**b. Recorded that Referee 2 had been visited by you on 17 January 2019;**

**FOUND PROVED**

25. The panel had sight of the completed 'Connected Person Main Form'. Ms Francis has indicated immediately above her signature: 'Mr [Referee 2] dated 04/10/18, Conformed [sic] at a home visit 17/01/19'. Ms Francis, in addition to signing that page, has entered the date of 14 February 2019.
26. The panel considered this to be a clear indication that Ms Francis had recorded that Referee 2 had been visited by her on 17 January 2019. This was also consistent with Ms Francis's written assertions that she had carried out the visit which is why it was recorded.
27. The panel therefore found allegation 1(b) proved.

**c. Implied that you had spoken to Referee 1 and/or Referee 2 personally at a home visit;**

**FOUND PROVED**

28. The panel heard and accepted evidence from RW that, during an investigation interview with Ms Francis on 10 May 2021, she had specifically asked Ms Francis what the purpose of carrying out a reference check was. Ms Francis had told her that for a connected carer assessment it is important to know if the applicants are fit for purpose and that there was no evidence that they shouldn't/couldn't care for the children. She further advised that she needed to make sure that they were the author of the reference that had been received. RW went on to ask her whether she had spoken to colleagues about the process and Ms Francis had confirmed that she had done so and that they had advised her that references needed to be checked to ensure that referees had not changed their views and that there were no changes to what they had written.



29. The panel considered there to be clear evidence that Ms Francis knew that by confirming that a home visit with the referee had been carried out, this implied that she had spoken to them personally. The panel therefore found allegation 1(c) proved.

**d. Recorded that Referee 1 and/or Referee 2's references had been confirmed at those home visits;**

**FOUND PROVED**

30. The record does state 'Conformed (sic)' in relation to the visit to both Referee 1 and Referee 2. Despite the typographical error the message was clearly being conveyed by Ms Francis that she had confirmed the references. This was consistent with her knowledge, as detailed above, that references needed to be checked to make sure that they were the author of the reference that had been received, to ensure that the referee had not changed their views and that there were no changes required to what they had written.
31. The panel considered there to be clear evidence that by entering the word 'conformed [sic]' this was intended to mean that she had done the necessary checks with the referee. The panel therefore found allegation 1(d) proved.

**when this was not true.**

32. LW was a senior social worker in Ms Francis's team at the time, and the panel saw evidence from the notes of RW's investigation, that LW had telephoned Applicant 1 on 20 February 2019 in relation to proceeding to a fostering panel. During the conversation, Applicant 1 reported that *"Jan has lied within the assessment stating that she has spoken to [Applicant 2]'s references, 2 of which she documented she had visited, and one of them which she said she had spoken to over the phone"*. LW set this out in an email she sent to HS on 22 February 2019. LW's email also records her initial enquiries into the matter:

a. She telephoned Referee 1 on 21 February 2019, whom she recorded as saying that she had *"never met Jan, never received a phone call from her, and furthermore has never even received any written correspondence from her"*;

b. She telephoned Referee 2 on 22 February 2019, whom she recorded as saying that he had *"never had a visit from Jan...and was at work on 17.01.19"*.

33. Ms Francis was interviewed by RW on 10 May 2019. During that interview, she confirmed she had worked for [PRIVATE] Council since 2000 as a home worker before qualifying as a social worker. She joined the team in late 2018. She was able to explain the process for recording a visit to a referee and would record that she had visited, whom she had seen and what was discussed. She stated that she was unable to

complete the checks in relation to Referee 1 and Referee 2 in the correct section on Frameworki so she had added them somewhere else, although later she said that she had been unable to record the checks on Frameworki for the three referees and these were therefore only recorded within the Form. Ms Francis stated that the visit to Referee 1 was unannounced. She described Referee 1 as welcoming and introduced herself but said she did not go into the house and sit down. She thought she may have stood just inside the front door as Referee 1 may have been going somewhere. She did not talk about anything specific as the reference was positive.

34. Ms Francis informed RW that she then travelled to see Referee 2. She stated that this visit was also unannounced and she thought she arrived sometime between 10-11am. She stated that there was building work being carried out down the side of the property. There was no answer at the front door but a man who appeared to be doing building work appeared from the side of the house and she spoke to him. She had confirmed his identity by asking if he was Referee 2.
35. The panel received a written statement from Referee 1 and also heard oral evidence from her. Referee 1 was interviewed on 16 April 2019 as part of the independent local investigation. She said that she had provided a written reference on 13 October 2018 but that nobody had contacted her from [PRIVATE] Council afterwards. Specifically, she had received no contact from Ms Francis by any means. She stated that she believed she was at home all day on 17 January 2019, because her calendar had no entries on it. She would have heard if someone had phoned or knocked on the door. She confirmed that it would have been difficult for someone to call in to visit her unannounced because she had caring responsibilities and spent a lot of time away from her house. Her evidence was clear, cogent, consistent and credible. It was also supported by the lack of any supporting evidence of a visit to speak with her.
36. HS was interviewed by RW during the course of her investigation and said that it was expected for a case note to be added for every visit as well as for every action, to set out that a visit had taken place and what was discussed. The Frameworki case record shows no entry to substantiate the visit to Referee 1 on 17 January 2019, or indeed on any date. There was no record on the case file, and no entry in her electronic or paper diary to confirm a visit by Ms Francis, and Ms Francis had not located any corroborative handwritten notes during the independent local investigation.
37. The panel noted Ms Francis's assertions that a home visit had taken place, but she has not engaged with this hearing and the panel was, therefore, unable to test her evidence during this hearing. The panel heard nothing which caused it to doubt the veracity of Referee 1's evidence. It therefore preferred her account that no visit by Ms Francis had

taken place on 17 January 2019, and specifically that Ms Francis had not spoken to her or confirmed her reference.

38. Whilst the panel did not hear from Referee 2, it took into account his direct testimony given to RW during the course of her investigation. RW was an independent professional with experience in investigation. She gave evidence of a robust methodology for her investigation which she executed thoroughly. Referee 2 was interviewed on 10 May 2019 by RW as part of her investigation. He said that he had provided a reference but had not received contact from Ms Francis by any means. He remembered that he would have been at work on 17 January 2019 because he was off work the day before that. He would have left for work at 6am to arrive at 7am and would not return home until around 6pm. There were construction workers at his home and had been there for 14-15 months, but none of them said anything about receiving a visitor at the house.
39. The Frameworki case record shows no entry to substantiate the visit to Referee 2 on 17 January 2019, or indeed on any date. There was no record on the case file, no entry in her electronic or paper diary to confirm a visit by Ms Francis, and Ms Francis was unable to locate any corroborative handwritten notes during the independent local investigation.
40. The panel accepted the hearsay evidence of Referee 2 into evidence. RW kept contemporaneous handwritten notes during the course of the interview with Referee 2 which she typed up immediately following the interview. There was clear evidence that she had attempted to obtain the best evidence available. The panel therefore concluded that it could give significant weight to Referee 2's evidence and that there was nothing that it had been precluded from exploring with him by way of panel questions.
41. The panel noted Ms Francis's assertions that a home visit had taken place with Referee 2 but she has not engaged with this hearing and it was, therefore, unable to test her evidence during this hearing. The panel heard nothing which caused it to doubt the veracity of Referee 2's evidence, which was the same as that of Referee 1, namely that no home visit had taken place. It therefore preferred Referee 2's account that no visit by Ms Francis had taken place on 17 January 2019, and specifically that Ms Francis had not spoken to him or confirmed his reference.

## **2. Your conduct at paragraph 1 above was dishonest.**

### **FOUND PROVED**

42. The panel first of all considered the actual state of Ms Francis's knowledge or belief as to the facts. The panel observed that Ms Francis was an experienced social worker, who was aware of what the checks on a referee should constitute, as indicated in her investigation interview with RW. She knew that she had made entries in the records

which indicated that she had done the required detailed checks with Referee 1 and Referee 2. She would also have known when making the entries that she had not done what her records suggested she had. The panel did not consider there to be any possibility of her mistakenly recording that she had completed the checks. There is no other reasonable explanation for her conduct other than she had knowingly recorded work she had not completed.

43. The panel next applied the objective standards of ordinary decent people. The panel concluded that ordinary decent people would consider the actions of a social worker, entering a deliberately misleading entry in a record suggesting work had been completed when it had not been, to be dishonest.

44. The panel therefore found allegation 2 proved.

### Finding and reasons on grounds

45. Mr Harris submitted that whether the facts found proved amount to misconduct is a matter of judgement for the panel, rather than a matter of proof. He reminded the panel that misconduct was defined by Lord Clyde in the case of *Roylance v General Medical Council (No 2)*<sup>1</sup> as:

*"a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances...[t]he standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [ . . . ] practitioner in the particular circumstances."*

46. Mr Harris submitted that social workers are routinely in trusted positions carrying out work on their own. He submitted that the expectation is that social workers will carry out their role with scrupulous accuracy, honesty and integrity. He further submitted that the public needs to have confidence that a social worker has carried out tasks in this manner, as do decision makers who rely on assessments completed by social workers.

47. Mr Harris reminded the panel that Ms Francis was in a position of power to recommend whether Applicant 1 and Applicant 2 were suitable to foster. She was required to visit and have detailed discussions with the referees. Mr Harris stated that Ms Francis did not do this, but instead falsely asserted that visits had taken place. He stated that this had the potential to place a child at risk of harm, and her conduct was aggravated by her dishonesty.

48. Mr Harris submitted that whilst the dishonest conduct related to a single case file it spanned several events. He suggested that this could amount to a pattern of behaviour. He submitted that Ms Francis's conduct may be attitudinal and entrenched.

49. Mr Harris submitted that Ms Francis's conduct involved serious departures from fundamental standards.

50. The panel reminded itself of the advice of the legal adviser that the following cases assist with how it should approach the issue of misconduct:

a. *Doughty v GDC (1988) AC 164*

Misconduct was stated to be conduct that has:

*"fallen short, by omission or commission, of the standards of conduct expected... and that such falling short as is established should be serious."*

b. *Roylance v GMC (2000) (No 2) [2000]1 AC 311*

Misconduct was described as:

*"a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances."*

c. *Nandi v GMC (2004) EWHC 2317*

Mr Justice Collins observed that in other contexts misconduct has been referred to as:

*"conduct which would be regarded as deplorable by fellow practitioners."*

51. The panel found that Ms Francis's actions were a breach of the following standards:

a. HCPC Standards of Conduct, Performance and Ethics (2016):

*6.2 - You must not do anything, or allow someone else to do anything, which could put the health or safety of a service user, carer or colleague at unacceptable risk.*

*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.*

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

*10.2 - You must complete all records promptly and as soon as possible after providing care, treatment or other services.*

b. HCPC Standards of Proficiency (2017):

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

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

*10.1 - be able to keep accurate, comprehensive and comprehensible records in accordance with applicable legislation, protocols and guidelines*

*10.2 - recognise the need to manage records and all other information in accordance with applicable legislation, protocols and guidelines*

52. The panel concluded that, given the dishonesty involved, fellow members of the social work profession would consider Ms Francis's actions to be shocking and a serious falling short by reference to the standards required of her. Members of the public would also be shocked to hear that a social worker, in a position of power, would create such a misleading record of steps that she had taken in relation to an important fostering assessment.
53. The panel was concerned that Ms Francis had been dishonest during the course of her work as a social worker, in relation to an assessment specifically designed to ensure that only suitable carers are approved and that vulnerable children are safeguarded. The panel concluded that Ms Francis has fallen short of the standards of conduct expected of social workers and that the falling short that has been established is serious.
54. The panel found that the facts found proved do amount to the statutory ground of misconduct.

### Finding and reasons on current impairment

55. In relation to impairment of fitness to practise, Mr Harris highlighted that Ms Francis's conduct was not isolated in that she had been dishonest in relation to two different home visits. He stressed that her conduct was attitudinal, and that the facts proven against her were hard to remediate. Mr Harris stated that there was no evidence of insight, nor of any steps taken towards developing insight. He stated that without insight, remediation is unlikely. He emphasised that Ms Francis's lack of engagement with the Social Work England process means that she may have a hardened attitude to insight or remediation, and there is therefore a risk of repetition.
56. Mr Harris submitted on behalf of Social Work England that a finding of current impairment should be made as Ms Francis's conduct and the risk of repetition puts service users and members of the public at risk. He further submitted that Ms Francis's conduct undermines public confidence in the profession and undermines the aim of Social Work England to promote and maintain proper professional standards for social workers in England. Mr Harris invited the panel to find that Ms Francis's fitness to practise is currently impaired by reason of misconduct.

57. The legal adviser gave advice to the panel, which it accepted, of the need to have regard to the following case law in relation to impairment:

- a. *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox provided a helpful approach to the determination of impairment as it sets out that there must be consideration of what had occurred in the past and what is liable to happen in the future:

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

*a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

*b. has in the past brought and/or is liable in the future to bring the ...profession into disrepute; and/or*

*c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the ...profession; and/or...*

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

- b. *Cohen v GMC [2008] EWHC 581 (Admin)* in which Mr Justice Silber stated:

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

58. The legal adviser also reminded the panel of the need to have regard to the overarching objective of Social Work England, of protecting the public, which involves the pursuit of the following objectives:

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

59. The panel reminded itself of Ms Francis's denials of any wrongdoing throughout the investigation by [PRIVATE] Council and Social Work England's own investigation. Her persistent denials and lack of engagement with this hearing, mean that Ms Francis has not been able to demonstrate any remorse or insight and, inevitably, it has been difficult for the panel to identify any element of remediation. It is, therefore, highly likely that there will be a repetition of the same type of conduct by Ms Francis.
60. The panel had regard to the approach in the case of *Grant* and concluded that:
- a. Ms Francis has in the past acted and is liable in the future to act so as to put a vulnerable service user at unwarranted risk of harm; and
  - b. Ms Francis has in the past brought and is liable in the future to bring the social work profession into disrepute; and
  - c. Ms Francis has in the past breached and is liable in the future to breach one of the fundamental tenets of the social work profession, namely protection of vulnerable service users; and
  - d. Ms Francis has in the past acted dishonestly and is liable to act dishonestly in the future.
61. The panel concluded that a finding of impairment of fitness to practise is necessary in order to:
- a. protect, promote and maintain the health, safety and well-being of the public, including vulnerable service users;
  - b. promote and maintain public confidence in the profession; and
  - c. promote and maintain proper professional standards within the profession.
62. The panel therefore concluded that Ms Francis's fitness to practise is impaired by reason of her misconduct.

### Decision on sanction

63. In relation to sanction Mr Harris submitted that relevant case law includes:
- a. *Bolton v Law Society [1994] 1WLR 512* which considered the purpose of sanction:

*"In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the*



*offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."*

and

*"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."*

- b. *Parkinson v NMC [2010] EWHC 1898 (Admin)* in which a sanction for dishonest conduct was considered where a registrant had not attended the hearing:

*"A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure."*

64. Mr Harris referred to the Sanctions Guidance and submitted on behalf of Social Work England that a Removal Order is the necessary, proportionate and appropriate order to maintain confidence in the profession and protect the public. He reminded the panel that social workers are trusted to act honestly at all times, including when no-one is watching and when they are in a position of power over others. They are trusted to safeguard vulnerable service users.
65. Mr Harris submitted that Ms Francis's dishonesty constitutes a course of conduct. He further submitted that her misconduct is particularly serious.
66. Mr Harris submitted that nothing short of a restrictive order would be sufficient given the panel's findings. In relation to a Conditions of Practice Order he reminded the panel that these are usually used in lack of competence or health cases. He submitted that a Conditions of Practice Order would be insufficient for a case involving dishonesty and abuse of trust, where attitudinal failings are involved. He further submitted that, as Ms Francis has indicated that she will not practise again, she would be unlikely to comply with conditions.

67. Mr Harris submitted that Ms Francis's misconduct is incompatible with ongoing registration. He stated that she has risked harming service users and has undermined confidence in the profession. Mr Harris submitted that Ms Francis's failures were elementary. He stated that she has made it repeatedly clear she does not want to work as a social worker again and it is clear she will not reflect or remediate. He stated that, in light of the high risk of repetition and no realistic prospect of remediation or risk of repetition lessening, suspension is not appropriate.
68. The panel accepted the advice of the legal adviser that a Removal Order, a Suspension Order, a Conditions of Practice Order or a Warning Order can be imposed in this case.
69. The legal adviser reminded the panel:
- a. to have regard to Social Work England's Sanctions Guidance, and to work through the sanctions in ascending order starting first of all with no order, and then moving on to consider the least restrictive sanction first;
  - b. that it is helpful to consider whether there are any particular mitigating or aggravating features in the case;
  - c. to have regard to the overarching objective of protection of the public which includes the wider public interest;
  - d. that any sanction should be proportionate;
  - e. to weigh the interests of the public against the interests of Ms Francis, and to bear in mind that whilst sanctions are not intended to be punitive they may have a punitive effect.
70. The panel first of all considered the aggravating features in this case and identified the following:
- a. Ms Francis's misconduct was not isolated in that she stated, dishonestly, that she had completed two different referee checks when she had not. The panel did not go as far as invited to by Mr Harris, to categorise her conduct as demonstrating a pattern;
  - b. Ms Francis had multiple opportunities to have put things right and visit the referees before the assessment was completed, or to confirm that she had not actually spoken to the referees to enable someone else to complete the checks, but did not do so;
  - c. Ms Francis has shown a lack of understanding of why a regulatory hearing is necessary and has not engaged with or attended this hearing;

- d. Ms Francis's dishonesty was in the context of her work and had potential consequences for a particularly vulnerable service user.

71. The panel next considered whether there were any mitigating factors. It could not identify any but noted that Ms Francis does not have any prior regulatory findings against her.

72. The panel first gave careful consideration as to whether it would be appropriate to conclude the case with no action. The panel noted the following paragraphs of Social Work England's Sanctions Guidance:

*"73. This outcome means there is no restriction on the social worker's practice. The social worker's fitness to practise is impaired at the point the decision is made, but the finding of impairment has no duration – the social worker is regarded as fit to practise at the end of the proceedings. This outcome is likely to be exceptional and would be in cases where the finding of impairment itself is enough to protect the wider public interest. It may be appropriate where there has been a significant departure from professional standards or guidance, but which has been fully remediated with no risk of repetition."*

73. Given the panel's findings in relation to misconduct and impairment, the panel determined that to conclude the case with no action would send out the wrong message to the public, the profession and Ms Francis about what is an acceptable standard of conduct. It would not achieve the aims of Social Work England's primary objective to protect the public, given the panel's finding that the likelihood of repetition is high.

74. The panel next considered whether it would be appropriate to conclude the case with advice or a warning. The panel noted the following paragraphs of Social Work England's Sanctions Guidance.

*"76. Advice or warnings issued following a finding of impairment are published on the Social Work England website and are included on the social worker's register entry. This means those engaging with the social worker professionally can be made aware of the concerns. The social worker's fitness to practise remains impaired while the advice or warning continues to be in effect."*

*77. These outcomes do not directly restrict practice and they cannot be reviewed before they expire, except in the case of a warning if new concerns are raised. They are therefore not appropriate where there is a current risk to the public."*

75. Given its findings on risk of repetition, the panel determined that to conclude the case with advice or a warning would be insufficient to protect the public, maintain confidence in the profession and uphold proper standards of conduct.

76. The panel next considered whether to impose a Conditions of Practice Order. The panel noted the following paragraphs of the Sanctions Guidance:

*"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. In addition to any protective restrictions, the conditions may include remediation steps that the social worker must take as a minimum in order to regain fitness to practise, such as successful completion of relevant education or training.*

*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.*

*86. Conditions may be appropriate where public protection can be delivered by some restriction of practice, but it is not necessary for either public protection or wider public confidence grounds to suspend the social worker's registration. When considering public protection, decision makers must fully assess insight and any attitudinal behaviours to determine whether or not the social worker is capable of complying with conditions."*

77. The panel considered that a Conditions of Practice Order would be insufficient for this case which has involved dishonesty and abuse of trust. Ms Francis has indicated that she will not practise again, and the panel agreed with Mr Harris's submission that she would be unlikely to comply with conditions. In the particular circumstances of this case workable conditions cannot be formulated.

78. The panel next considered a Suspension Order. The imposition of a Suspension Order would give an opportunity to Ms Francis to reflect and remediate but there is no evidence she wants to do that; indeed to the contrary, as she has asked Social Work England to stop communicating with her.

79. The panel had particular regard to the following paragraphs of the Sanctions Guidance:

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

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

*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.*

80. The panel had regard to the case of *Parkinson* and noted the following highly relevant paragraph from the judgement:

*"A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure."*

81. The panel is not persuaded in this case to adopt the more lenient outcome of a Suspension Order. It noted the following paragraph of the Sanctions Guidance:

*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.*

82. Ms Francis's conduct was particularly serious, and in circumstances where she has shown no remorse, insight or remediation, and no willingness to engage with Social Work England now or in the future, the proportionate outcome is a Removal Order. This is the only possible sanction that will properly:

- a. protect, promote and maintain the health, safety and well-being of the public, including vulnerable service users;
- b. promote and maintain public confidence in the profession; and
- c. promote and maintain proper professional standards within the profession.

### Interim order

83. In light of its findings on Sanction, the panel next considered an application by Mr Harris for an Interim Suspension Order to cover the appeal period before the Removal Order becomes operative.

84. The panel received advice from the legal adviser that as the panel has made a final order they may go on, without needing to give notice to Ms Francis, to impose an interim order to cover the appeal period or the period before any appeal is heard. Interim orders can be for a total period of 18 months. The adjudicators may make an interim order where they consider it necessary for the protection of the public or in the best interests of the social worker. Protection of the public can include wider public interest grounds.

85. The panel was mindful of its earlier findings and decided that it would be wholly incompatible with those earlier findings and the imposition of a Removal Order to conclude that an Interim Suspension Order was not necessary during the appeal period:

- a. to protect, promote and maintain the health, safety and well-being of the public, including vulnerable service users;
- b. to promote and maintain public confidence in the profession; and
- c. to promote and maintain proper professional standards within the profession.

86. Accordingly, the panel concluded that an Interim Suspension Order should be imposed on public protection and 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**

87. 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:
- a. to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
  - b. not to revoke or vary such an order,
  - c. to make a final order.
88. 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.
89. 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.
90. 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**

91. Under paragraph 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:
- a. 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.
  - b. 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.
92. 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.

