

Social worker: Ms Natalia
Koschnik
Registration number: SW93422
Fitness to Practise
Final Hearing

Dates of hearing: 27 March 2023 to 4 April 2023

Hearing venue: Remote hearing

Hearing Outcome: Fitness to practise impaired, removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) ('the Regulations').
2. Ms Koschnik was not present and was not represented in her absence but sent in an application to postpone the hearing on the first day of the hearing.
3. Social Work England was represented by Ms Nutan Fatania, case presenter, instructed by Capsticks LLP.

Adjudicators	Role
Karen McArthur	Chair
Beverley Blythe	Social worker adjudicator
Cherrylene Henry-Leach	Lay adjudicator

James Dunstan	Hearings officer 27-28 March 2023; 30 March 2023 -
Jenna Keats	Hearings officer 29 March 2023
Jo Cooper	Hearings support officer 27-28 March 2023; 30 March 2023 – 4 April 2023
Gabriella Berettoni	Hearings support officer 29 March 2023
Megan Ashworth	Legal adviser 27 March 2023
Conor Heaney	Legal adviser 28 March – 4 April 2023

Allegation:

The Allegation arising out of the regulatory concerns considered at the hearing was as follows:

Whilst registered as a social worker, you did not adhere to professional boundaries in that you:

1. ***Between 10 May 2019 and 3 June 2019 you:***
 - a. ***Came into possession of Service User A's bank card;***
 - b. ***Made the following transactions with Service User A's bank card;***
 - i. ***17 May 2019, at Morrisons, Leeds, at 11:53am to the sum of £27.20 and/or***
 - ii. ***20 May 2019, at Morrisons, Leeds, at 11:42am to the sum of £23.00 and/or***
 - iii. ***21 May 2019, at Sainsburys, Leeds, at 11:06am to the sum of £28.55 and/or***

- iv. *23 May 2019, at Sainsburys, Leeds, at 11:27am to the sum of £18.50 and/or*
 - c. *Made the following attempted transactions:*
 - i. *23 May 2019, at Morrisons, Leeds, at 11:53am to the sum of £26.80 and/or*
 - ii. *3 June 2019 at Morrisons, Leeds at 11:58am to the sum of £21.90 and/or*
 - d. *Made the following attempts to use the card with an incorrect PIN number:*
 - i. *16 May 2019, Morrisons Kirkstall, at 11:39am and/or*
 - ii. *16 May 2019 at 1:26am;*
2. *Between 20 June 2019 and 20 March 2020, on being asked about how you came into possession of Service User A's bank card, you stated that you had:*
- a. *Lent money to Service User A; and/or*
 - b. *Purchased items for Service User A; and/or*
 - c. *You did not record the matters at 2(a) and/or 2(b) in Service User A's records; and/or*
 - d. *You did not make your employer aware of the transactions at 2(a) and/or 2(b); and/or*
 - e. *Service User A had given you their bank card on 10 May 2019, to repay monies referred to at 2(a) and /or 2(b).*
3. *Your account at paragraph 2 is dishonest.*
4. *The matters outlined in paragraphs 1, 2, and 3 amount to the statutory ground of misconduct.*
5. *By reason of your misconduct your fitness to practise is impaired.*

Service of notice:

- 4. Ms Koschnik did not attend and was not represented in her absence. Before addressing Ms Koschnik's application to postpone the hearing, the panel of adjudicators ('the panel') considered whether the notice of hearing had been properly served on her. The panel was informed by Ms Fatania that notice of this hearing was sent to Ms Koschnik by email and next day delivery service to the email and postal address provided by the social worker (namely their registered addresses as they appear on the Social Work England register). Ms Fatania submitted that the notice of this hearing had been duly served.

5. The panel had regard to the documents contained in the final hearing service bundle as follows:
- A copy of the notice of the final hearing dated 24 February 2023 and addressed to Ms Koschnik at her email and postal registered addresses previously provided to Social Work England;
 - An extract from the Social Work England Register as at 24 February 2023 detailing Ms Koschnik's registered email and postal addresses;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 24 February 2023 the writer sent by email and next day delivery service to Ms Koschnik at the addresses referred to above: notice of hearing and related documents;
 - A copy of the Royal Mail Track and Trace Document indicating "signed for" delivery at Ms Koschnik's postal address at 13:01pm on 28 February 2023.
6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. Having had regard to the applicable 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 duly served on Ms Koschnik.

Preliminary matters:

Application in private

8. Having heard that Ms Koschnik's application to postpone related to her health, the panel, accepting the advice of the legal adviser, decided to hear the application in private. It was satisfied that the nature of the application was inextricably linked to the health of Ms Koschnik and so hearing the application in private was justified in order to protect her private life.

Ms Koschnik's application to postpone the hearing

9. Ms Fatania, on behalf of Social Work England, informed the panel that Ms Koschnik had made a written application to postpone the hearing. Ms Fatania explained that Social Work England opposed Ms Koschnik's application to postpone. Ms Fatania took the panel through Ms Koschnik's application as follows:
- At 6:17am today (27 February 2023), Ms Koschnik sent the following email to Social Work England:

[PRIVATE]

- At 9:13am, the Hearings Officer replied, and drew Ms Koschnik's attention to relevant Social Work England guidance, including areas on how the case may proceed and applications that would be open to her to make.
 - At 11:19am, Ms Koschnik sent, by email, a written application to postpone the hearing as follows:
 - **[PRIVATE]**
 - At 12:46. Ms Koschnik forwarded a copy of the Statement of Fitness for Work, dated 27 March 2023, which had been completed by her GP. **[PRIVATE]**
10. Ms Fatania submitted that the medical evidence was insufficient to support an application to postpone on the grounds of ill health, as it did not address the question of whether Ms Koschnik was fit to attend and participate in a hearing. Ms Fatania stated that there were no details referencing medical appointments clashing with certain parts of the hearing which could necessitate adjustments.
 11. Ms Fatania **[PRIVATE]**. Ms Fatania drew the panel's attention to Social Work England's guidance on postponements and adjournments, to the effect that where proceedings themselves appeared to be the cause of stress, a postponement would be unlikely to serve a useful purpose, as the stress would persist while proceedings were ongoing. Ms Fatania invited the panel to refuse Ms Koschnik's application to postpone.
 12. The panel heard and accepted the advice of the legal adviser. The legal adviser cited the case of *CPS v Picton* (2006) EWHC 1108 which gives guidance as to the approach on whether or not to grant an adjournment and that it is a discretionary decision. She advised the panel that the factors to take into account, when sought by a social worker, include:
 - The need for expedition in the prosecution of proceedings;
 - Where the adjournment is being sought by the social worker, whether, if not granted she will be able to present a defence;
 - The likely consequences of the adjournment, including the length and any impact a delay may have (on a fair hearing), the public interest, which includes public protection;
 - The reason for the adjournment application and whether it arises out of the fault of the party applying for, or opposing the adjournment;
 - The history of the proceedings and any previous adjournments;
 - The need to ensure justice between the parties.
 13. The legal adviser also advised the panel that considering these factors would necessarily involve a balancing exercise, as there would be tensions between them, and the overriding importance was that of fairness. She also cited the case of *GMC v Hayat* [2018] EWCA Civ 2796, specifically with reference to medical evidence to support an application to postpone on grounds of ill health.

14. The panel [**PRIVATE**]. The panel acknowledged that proceedings would be stressful in themselves, but considered that Social Work England had sought to address this with reasonable adjustments, ensuring extra breaks would be given to Ms Koschnik as required.
15. The panel considered [**PRIVATE**].
16. The panel did not consider that the medical evidence which had been provided by Ms Koschnik was sufficient to satisfy it that she was unable to attend and participate in the hearing. The panel noted that the Statement of Fitness to Work, was a pro forma document which related to Ms Koschnik not being fit to work. It did not specifically address whether or not she was fit to participate in the hearing. The panel noted that Social Work England Guidance indicated that medical evidence to support an application to postpone should explain how the ill health affects the social worker's ability to take part in the fitness to practise proceedings.
17. The panel noted that whilst the Statement of Fitness for Work signed Ms Koschnik off work for three months, Ms Koschnik herself had considered that she was not in a position to say how long it would take her to recover.
18. The panel considered that there was also the wider issue of delay. It was mindful that the allegations dated back to 2019, and witnesses had been scheduled to attend the hearing this week who may be inconvenienced. The panel considered that further delay may have an additional impact on memory.
19. In all the circumstances, having considered all the factors, the panel considered that the balance came down on the side of refusing the application to postpone the hearing.

Proceeding in absence

20. Ms Fatania applied for the hearing to proceed in the absence of Ms Koschnik. Ms Fatania told the panel that Ms Koschnik had emailed Social Work England overnight, in response to being notified that the application to postpone the hearing had been refused. In her email, dated 27 March 2023 at 19.10 hours, Ms Koschnik again referred to her mental health issues. The email continued: *'I called the witnesses as proof that human memory is unreliable, so you are telling me now that a postponement of a few days/weeks would make their memories of the event any less unreliable considering that this case has been going on for nearly 4 years. I have called the witnesses to demonstrate that not only they could not remember the events of the day after a few months how could they possibly remember after nearly four years.'*
21. Ms Fatania submitted that Ms Koschnik's email contained no renewed request for an adjournment and that there was no material basis upon which to reconsider a postponement of the hearing. Ms Fatania stated that, although Ms Koschnik had made repeated references to her ill health as a reason for her non-attendance, she had produced insufficient evidence in support of her application. The allegations, which went back to

2019, were serious and live witnesses had been scheduled to give evidence at the hearing. For these reasons, Ms Fatania invited the panel to proceed in the absence of Ms Koschnik.

22. The panel accepted the advice of the legal adviser in relation to the factors to take into account when considering whether to proceed in the absence of Ms Koschnik. This included reference to the cases of *R v Jones* [2003] UKPC 34 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.
23. The panel was satisfied that Ms Koschnik had voluntarily waived her right to attend the hearing. She had provided insufficient evidence that the reason for her non-attendance at the hearing was connected to her ill health. There was also uncertainty as to the period during which Ms Koschnik would be unable to attend the hearing. The material presented when the panel was considering Ms Koschnik's postponement request and evidenced by the Statement of Fitness to Work was in contrast to the suggestion, contained in Ms Koschnik's email dated 27 March 2023 at 19.10 hours, that she was seeking a postponement of only a matter of weeks. The panel also had regard to the allegations, which dated back to 2019, and which were serious and that witnesses had been scheduled to give evidence at the hearing. It was important, given the serious nature of the allegations, to proceed with the hearing and hear the witnesses' evidence when their recollections of the events would be fresher at this hearing rather than if the hearing was to be adjourned to some date in the future. The panel decided that it would be fair and appropriate to proceed in Ms Koschnik's absence.
24. The panel considered that, in deciding to proceed in her absence, the extent of any disadvantage to Ms Koschnik could be minimised by attaching such weight as the panel considered appropriate to the written material she had provided to Social Work England in the course of these proceedings.
25. For these reasons, the panel decided that it was fair and appropriate to proceed with the hearing in Ms Koschnik's absence.

Application to admit hearsay evidence

26. Ms Fatania outlined that Ms Koschnik had been interviewed by police on 28 June 2019 and 22 October 2019 in relation to allegations of committing fraud by abuse of position. The investigation arose out of Ms Koschnik's use of SUA's bank card after he had died. The police investigation had resulted in no prosecution. Ms Fatania applied to have the production statement of Ms KK ('KK') and the accompanying exhibits admitted as hearsay evidence. In addition to KK's statement, Ms Fatania stated that the exhibits comprised the following documents:
 - Investigation documents – this included the crime occurrence report and police interview summaries;

- Witness statements and exhibits – this included witness statements of two police officers who attended SUA’s house together with body worn video (‘BWV’) footage;
- Store receipts and stills of CCTV footage; and
- Ms Koschnik’s bank statement.

27. Ms Fatania stated that Ms Koschnik had accepted to a significant degree the facts of the Allegation. She stated that the risk of any prejudice to Ms Koschnik by the admission of the hearsay evidence would be limited. This was because none of it went to the crux of Social Work England’s case and which was in dispute, namely, whether Ms Koschnik, by using Service User A’s ‘(SUA)’ card and failing to disclose the use of the card to her employer had acted dishonestly. Ms Fatania confirmed that, in so far as the police interview summaries were concerned, Social Work England was not proposing to rely on the expressions of opinion of interviewing police contained within them. The panel was told that, while enquiries were ongoing, it had not been feasible to secure the attendance of the two police officers who had attended SUA’s home on the relevant date. While their evidence was that they did not overhear a conversation between SUA and Ms Koschnik about the card, they accepted that they were out of earshot for periods of time during the attendance at SUA’s home.
28. For these reasons, Ms Fatania submitted that the panel should admit the hearsay evidence.
29. The panel heard and accepted the legal adviser’s advice. In the course of that advice, the legal adviser made reference to the cases of *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin) and *Ogbonna v NMC* [2013] EWHC 1595 (Admin). He also referred the panel to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin), which distilled the principles to be derived from those two authorities, and *El Karout v NMC* [2019] EWHC 19 (Admin).
30. In its approach to the question as to whether or not to admit the hearsay evidence, the panel was mindful that the decision was dependent on the individual facts and circumstances of this case. Further, the overriding consideration of the panel on the question was to ensure that the proceedings were conducted fairly.
31. The panel noted that some elements of the hearsay evidence, as contained in the witness statements of the attending police officers, were ancillary to the main issue to be decided in the hearing i.e. that of dishonestly. Nevertheless, the panel decided that this evidence was not sole or decisive and that support for the hearsay evidence could be found in other witness evidence and the documentary exhibits. The panel, noting that the witnesses were not available for questioning, considered that it could attach such weight to the hearsay as it considered appropriate.
32. For these reasons, the panel decided to admit the hearsay evidence.

Summary of the evidence:

33. On 2 July 2019, the Health Care and Professions Council ('HCPC') received a referral from Leeds City Council ('the Council') regarding Ms Koschnik. At the material time, Ms Koschnik was employed by the Council and was allocated to SUA for three years.
34. Ms Koschnik qualified on/ around 2013 as a social worker and was eligible to apply for a senior social worker role. Ms Koschnik had undertaken capacity training and safeguarding, as well as dementia training during her time with the Council.
35. SUA was a vulnerable adult, with alcohol dependency. On 10 May 2019, Ms Koschnik attended SUA's property following a period of leave. Ms Koschnik contacted the police in order to gain entry to the property after she could not alert SUA. Upon entry, SUA was observed in bed and subsequently passed away in hospital later that day.
36. Between May and June 2019, SUA's bank card was used to complete various transactions, or attempted transactions, by Ms Koschnik. Ms Koschnik accepts using SUA's bank card, stating that SUA wanted her to use it and had spoken to SUA in relation to that, on 10 May 2019. It is alleged that SUA was not alert or able to hold a conversation.
37. On 28 June 2019 and 22 October 2019, Ms Koschnik was interviewed by police in relation to allegations of committing fraud by an abuse of position, namely that Ms Koschnik had used SUA's bank card. No further action was taken by the police and so no criminal charges followed.
38. On 20 March 2020, Ms Koschnik was interviewed as part of the local authority investigation. During that interview, Ms Koschnik summarised her duties, that she dealt with mental health and dementia cases from young people to a wide range of older people.
39. Ms Koschnik was not aware of a specific policy or guidance related to client finances but provided examples of cases where Ms Koschnik had used her own money for a microwave/shopping, that this was discussed in supervision and there was an agreement from the client who had capacity and also from management for that to be done.
40. During the interview, Ms Koschnik confirmed that prior to SUA's death, she only used his bank card once as he was poorly and '*needed some cigs*' then she used it again when he had passed away. She goes on to detail those occasions that she can recall during that interview.
41. At the hearing, the panel heard evidence from the following witnesses:
 - Mr BN ('BN'): Team Manager, Children's Services at the Council;
 - Mr RP ('RP'): Team Manager, Mental Health Team at the Council;
 - Ms CW ('CW'): Specialist Paramedic, Leeds Ambulance Station; and
 - Ms AB ('AB'): Team Manager at the Council.

BN:

42. BN was asked to investigate the alleged fraudulent use by Ms Koschnik of SUA's bank card. He had no previous dealings with Ms Koschnik. He was appointed to the investigation in October 2019 and interviewed Ms Koschnik on 3 March 2020. Amongst other documents, the summary of the investigatory meeting and the investigation report were exhibited to BN's statement.

RP:

43. RP chaired the disciplinary meeting in respect of Ms Koschnik. He had no previous dealings with her. The meeting took place on 29 April 2021. On 5 May 2021, RP wrote a letter to Ms Koschnik advising her that he had decided that she would be dismissed from her employment at the Council for gross misconduct.

CW:

44. CW attended SUA's home on 10 May 2019. Amongst other documents, a contemporaneous incident log and a statement which CW made on 31 May 2019 in respect of the call out was exhibited to CW's statement.

AB:

45. AB was Ms Koschnik's line manager. She allocated SUA to Ms Koschnik's caseload in February 2016. She stated that Ms Koschnik built up a good relationship with SUA. AB gave evidence about supervision sessions she had with Ms Koschnik. She also gave evidence about the Council's use of emergency funds and the practice in place at the Council when social workers had to use their own funds to meet service users' needs.

Finding and reasons on facts:

46. The panel accepted the legal adviser's advice.
47. In the course of that advice, the panel was advised as to the burden and standard of proof. The standard of proof was the civil standard, the balance of probabilities. The panel was reminded that it needed to consider the Allegation and each Particular and apply the balance of probabilities to the evidence. Ms Koschnik did not have to prove anything.
48. The panel turned to consider the Allegation.

Whilst registered as a social worker, you did not adhere to professional boundaries in that you:

1. Between 10 May 2019 and 3 June 2019 you:

a. Came into possession of Service User A's bank card;

49. The panel considered the following evidence:

- The transcript of Ms Koschnik's under caution interview with police on 28 June 2019 records that Ms Koschnik stated that, on 10 May 2019: '[SUA] *handed [Ms Koschnik] his bank card which he usually kept in his trouser pocket, he told her his PIN and told her that he wanted to pay off his £200 debt to her.*'
- During the investigatory meeting held on 3 March 2020, Ms Koschnik is recorded stating, in response to a question asking whether she had ever used SUA's bank card: '*Prior to his death I only used it once, it was when he was poorly, he needed some cigs, bread etc. Then again I also used it when he died.*'
- The letter sent to Ms Koschnik, dated 5 May 2021, following the conclusion of the disciplinary hearing, recorded that Ms Koschnik had admitted using SUA's card during police interviews.

50. Taking these pieces of evidence individually and cumulatively, the panel found Particular 1(a) proved on the balance of probabilities.

b. Made the following transactions with Service User A's bank card;

- i. 17 May 2019, at Morrisons, Leeds, at 11:53am to the sum of £27.20 and/or***
- ii. 20 May 2019, at Morrisons, Leeds, at 11:42am to the sum of £23.00 and/or***
- iii. 21 May 2019, at Sainsburys, Leeds, at 11:06am to the sum of £28.55 and/or***
- iv. 23 May 2019, at Sainsburys, Leeds, at 11:27am to the sum of £18.50 and/or***

c. Made the following attempted transactions:

- v. 23 May 2019, at Morrisons, Leeds, at 11:53am to the sum of £26.80 and/or***
- vi. 3 June 2019 at Morrisons, Leeds at 11:58am to the sum of £21.90 and/or***

d. Made the following attempts to use the card with an incorrect PIN number:

- vii. 16 May 2019, Morrisons Kirkstall, at 11:39am and/or***
- viii. 16 May 2019 at 1:26am;***

51. The panel considered the statement, dated 24 July 2019, from a Financial Crime Associate at the Royal Bank of Scotland. The statement documented the transactions which formed the basis of Particular 1(b) and the attempted transactions which formed the basis of Particulars 1(c) and 1(d).

52. The transcript of the police interview on 28 June 2019 recorded Ms Koschnik stating that '*she had gone to the ATM at Morrisons at Kirkstall, she cannot recall exactly which machine*

she used, but she entered the PIN and was told on the screen “INCORRECT PIN”. Ms Koschnik further stated that *‘she may have gone into Morrisons for some items she cannot recall, and paid for the goods possibly using [SUA’s] card’*. Ms Koschnik stated that she had completed three transactions at Morrisons, then changed her account that there had been two. She stated that there was a transaction at Sainsburys, all of which were self-serve tills, with contactless transactions. Ms Koschnik stated that *‘the transactions in Morrisons are not something she can specifically remember but states she will have done them’*.

53. In a follow up police interview, on 22 October 2019, Ms Koschnik said she could not remember using SUA’s card on *‘any other occasion than the one at Sainburys and the 2 at Morrisons. She confirmed that she initially stated she tried to withdraw the cash from the ATM on one occasion only, which was at one of the ATM machines outside of Morrisons’*. When asked about the transaction totalling £18.50, Ms Koschnik advised that *‘this was in fact a transaction at Sainsburys Otley Road’* and that *‘she was familiar with that store and accepted responsibility for that transaction’*.
54. During the second interview with the Police, the Social Worker was asked why there were transactions on 23 May 2019 in the sum of £26.80 at Morrisons and 3 June 2019 in the sum of £21.90.
55. The panel also considered the duplicate receipts contained in the hearing bundle. These were as follows:
 - 16 May 2019 at 11:53 hours shows a debit in the sum of £27.20.
 - 17 May 2019 at 11:42 hours shows a debit in the sum of £23.00.
 - CCTV stills from Sainsburys on 20 May 2019 show an individual, believed to be Ms Koschnik, at a self-service check out and exiting the store between 11:03 and 11:06 hours. The receipts demonstrate a debit in the sum of £28.55 on 20 May 2019 at 11:06 hours.
 - 21 May 2019 at 11:27 hours shows a debit in the sum of £18.50.
56. In her written response, dated 24 October 2021, to the Social Work England bundle Ms Koschnik stated that she had admitted the transactions when questioned by police, even though she could not recall some of them.
57. For these reasons, the panel found Particulars 1(b), 1(c) and 1(d) proved on the balance of probabilities.

2. Between 20 June 2019 and 20 March 2020, on being asked about how you came into possession of Service User A’s bank card, you stated that you had:

- a. Lent money to Service User A; and/or**
- b. Purchased items for Service User A; and/or**
- c. You did not record the matters at 2(a) and/or 2(b) in Service User A’s records; and/or**

- d. You did not make your employer aware of the transactions at 2(a) and/or 2(b); and/or**
- e. Service User A had given you their bank card on 10 May 2019, to repay monies referred to at 2(a) and /or 2(b).**

58. Having carefully considered the way in which Particular 2 was pleaded, it was clear to the panel that the stem of the Particular was directed towards Ms Koschnik's account of her actions rather than whether, in fact, Ms Koschnik had acted, or failed to act, in the manner set out.
59. Particular 2 therefore required the panel to direct its attention to the various accounts given by Ms Koschnik in relation to how she came into possession of SUA's bank card, her account she gave as to how she had used the bank card and her recording of transactions using the bank card on SUA's case notes. Particular 2 also required an examination by the panel as to whether or not, in those accounts, Ms Koschnik had stated that she had made her employer aware of the transactions.
60. Between the relevant dates, Ms Koschnik's two primary accounts of her actions were given as follows:
- During police interviews on 28 June 2019 and 22 October 2019; and
 - During an investigatory meeting on 3 March 2020.
61. Ms Koschnik gave an account of her actions during a disciplinary meeting on 29 April 2021. Reference to this meeting was made in a letter sent to Ms Koschnik by RP dated 5 May 2021. The panel did not have a transcript or summary of this meeting but disregarded any consideration of it, as contained in the letter dated 5 May 2021, as it was held after the dates covered by the stem of Particular 2.

Particulars 2(a), 2(b) and 2(e):

62. It seemed appropriate to the panel to take Particulars 2(a), 2(b) and 2(e) together. These particulars addressed the issue as to whether Ms Koschnik gave an account of lending money to, and purchasing items for, SUA and whether Ms Koschnik stated that, in return for these actions, SUA had told her on 10 May 2019 to keep his bank card to repay the monies she had spent for his benefit.
63. During a police interview with police on 28 June 2019, Ms Koschnik is recorded as stating: *'[Ms Koschnik] comforted [SUA] and told him that an ambulance was on the way - which had been called by police - and he handed her his bank card which he usually kept in his trouser pocket, he told her his PIN and told her that he wanted to pay off his £200 debt to her. She had bought him a fridge, heater and microwave with her own money and he was to pay her back.'*

64. In the course of the investigatory meeting on 3 March 2020, it is recorded that Ms Koschnik stated: *'I used the card 3 or 4 time, that's what I remember. I can't remember the first time. After his death I used it 3 or 4 times always contactless transaction I couldn't have heard the pin properly it didn't work, so I used contactless transaction, I didn't think about it at all. I spend £80. He owed me about, let's say I cannot remember but let's say £140 - that was for a microwave, a fridge and two heaters.'*
65. Having regard to the accounts given by Ms Koschnik, the panel found Particulars 2(a), 2(b) and 2(e) proved.

Particular 2(c):

66. This particular required the panel to decide whether Ms Koschnik stated, in the course of her accounts, that she had not recorded lending money to, and purchasing items for, SUA in SUA's case records.
67. During a police interview with police on either 28 June 2019 or 22 October 2019 (redactions make the date unclear), it is recorded: *'It was made clear to the suspect [Ms Koschnik] that despite her saying there was mention in the deceased's social care records of there being a debt, there is in fact no mention of any current outstanding monies owing to the suspect.'* It was clear to the panel that, in her interviews with police, Ms Koschnik had given an account that she had made relevant entries in SUA's case records.
68. In the course of the investigatory meeting on 3 March 2020, it is recorded:
- 'Did you take any other steps to evidence, document or share what happened regarding use of bank card and/or purchasing of goods?*
- Evidence is recorded under case on our system, only kept mental records but we're required to record when we use a client's bank card.'***
69. Having regard to the accounts given by Ms Koschnik, the panel found Particular 2(c) not proved.

Particular 2(d):

70. This particular required the panel to decide whether Ms Koschnik stated, in the course of her accounts, that she had not made her employer aware of her actions in lending money to SUA and/or purchasing items for him.
71. In the course of the investigatory meeting on 3 March 2020, Ms Koschnik is recorded as saying:
- '... I got and paid for the plumber. I discussed this with [AB], I paid for the plumber by bank transfer from my own account. I always got the money paid back. I also helped him apply for Pension Pay. When he got this money he paid me back. The*

plumber was something like £40 to £60. It was a verbal agreement that he would pay me back whatever, whenever he can, he paid me back in cash.

If someone needs something like a microwave I'd speak to [AB], then I buy it usually second hand. [AB] would say what if this client doesn't pay you back, I would say I know that is the risk I have to take. I've never been in a position where I would use their money which is why I would buy the item with my own money and I'd talk about it in my supervision and get the money back.'

72. Having regard to the account given by Ms Koschnik in the investigatory meeting, the panel found Particular 2(d) not proved.

3. Your account at paragraph 2 is dishonest.

73. The panel considered whether, having regard to its findings of fact in respect of Particulars 2(a), 2(b) and 2(e), the account given by Ms Koschnik, when asked about how she came into possession of SUA's bank card, was dishonest.
74. When considering this Particular, the panel reminded itself of the applicable legal test, as set out in *Ivey v Genting Casinos (UK) Ltd T/A Crockfords* [2017] UKSC 67:

'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.'

75. The panel considered Particulars 2(a) and 2(b) together. In her accounts given to police and at the investigatory meeting, Ms Koschnik consistently stated that she had lent money to SUA and that she had purchased items for him. This arrangement had been long-standing. Ms Koschnik made the point that she had raised the arrangement with her employer and had made relevant entries in SUA's case records. From its consideration of SUA's case records, it was plain to the panel that they contained multiple entries made by Ms Koschnik in which she documented lending money to SUA and purchasing items for him. A typical example is recorded on SUA's case notes on 31 August 2018. Ms Koschnik recorded on this date, at a home visit, that she lent SUA £25 and some tinned food and that she went to the shop where she bought him bread, milk and cheese. The panel concluded that, in ascertaining her state of mind at the time when she gave accounts of her actions, Ms Koschnik believed that she was not acting dishonestly. Objectively, the panel concluded that

Ms Koschnik's actions, during the giving of those accounts, were not dishonest by the standards of ordinary decent people.

76. For these reasons, the panel concluded that Particular 3, in so far as Particulars 2(a) and 2(b) were concerned, was not proved.
77. The panel next considered whether, in respect of Particular 2(e), the account given by Ms Koschnik was dishonest. This required the panel to address the sequence of events which had taken place at SUA's home on 10 May 2019 and the conversation which Ms Koschnik alleged she had had with SUA which had resulted, on her account, in SUA giving Ms Koschnik his bank card on that date.
78. Ms Koschnik's account, both to police and during the investigatory meeting, was in almost identical terms to her written response dated 24 October 2021. In that response, Ms Koschnik, in relation to the events of 10 May 2019, stated as follows: *'I raised my voice when I entered [SUA's] bedroom and said it was me and the police hear because [SUA] couldn't hear it well, he was poorly and didn't have glasses on (I think he did but cannot remember). Once he heard my voice he was ok. I sat on his bed next to him and we were talking for a bit and then he gave me his card saying please look after it and if I don't make it take what I owed (sic) you. He was a very honourable man and he wanted to pay his debts. I wanted to respect his wish. He told me the pin to his card but I just forget the pin and that's why I used contactless.'*
79. Ms Koschnik, in her written response, was critical of the failure of her employer to obtain evidence from the paramedics who attended SUA's home on the date in question. She stated that such evidence would have demonstrated that SUA was *'poorly but conscious, conversing, pushing [the paramedics] physically away and swearing at them.'*
80. During the hearing, the panel heard evidence from CW, a Specialist Paramedic, who attended SUA's home on 10 May 2019. She referred the panel to a statement, dated 31 May 2019, that she had made in connection with the call out. In this statement, CW described SUA's presenting condition as follows:

'On arrival we found Service User A laid on his bed, he had a reduced conscious level and was responding, but only when a painful stimulus... was carried out. This was broken down as follows; his eyes were open, starring (sic) at the ceiling and only upon carrying out painful stimuli was he heard to make incomprehensible sounds (he was unable to speak, even when painful stimuli was applied) and sure facial grimace and slight head movement away to withdraw from the painful stimuli, but he was not able to localise where the pain was... His skin was yellow, his body emaciated which led me believing he was peri-arrest (close to death).'
81. In a statement, a police officer who attended at SUA's home stated: *'My immediate perception of the male was that he was deceased. However, I spoke to him and he moved slightly but seemed on the borderline of unconsciousness. He could not speak to me and made several concerning groans but could not manage anything else.'*

82. The other police officer who attended the scene accepted that he had had limited interaction with SUA. The police officer, in a statement, said: *'I did not witness any interactions between [SUA] and [Ms Koschnik]. I heard [Ms Koschnik] trying to talk to [SUA] from the next room. I cant (sic) recall what she was saying but I am confident that his bank card and finances were not discussed in any conversation I overheard, as I believe I would have found that particularly odd behaviour and therefore would have remembered it. However at various times I was out of earshot of both [Ms Koschnik] and [SUA] as I was trying to resolve the water leak.'*

83. The panel also viewed the BWV recorded by police who attended SUA's home. The BWV records the following:

Police "He's out of it mate"

SW "I can tell him he's not well"

84. Later in the BWV it is recorded:

SW - "Michael are you alright"

SUA - "Hello"

SUA - "Help"

Police - "Hes completely out of it"

[...]

Police - "Can you ask him how long he has been lain there"

SW - "I have asked - he can't tell"

Police - "How long since you saw him"

SW - "two weeks"

85. From its own viewing of the BWV, together with the evidence of the police officers and CW, the panel concluded that Ms Koschnik would have been similarly aware of the parlous state of SUA's condition. Having fully taken into account her good character, the panel considered Ms Koschnik's account of what she said she had been told by SUA to be implausible. The panel considered that Ms Koschnik's account was contrary to the evidence from other sources which demonstrated that, rather than being *'poorly'* but purposeful, SUA was, in fact, close to death. Accordingly, the panel considered that, when giving her account as to how she came into possession of SUA's bank card on 10 May 2019, Ms Koschnik had acted dishonestly. Further, the panel concluded that Ms Koschnik's actions would be considered dishonest by the standards of ordinary decent people.

86. For these reasons, the panel concluded that Particular 3, in so far as Particulars 2(e) was concerned, was proved.

Finding and reasons on grounds

87. Ms Fatania submitted that, by her actions as found proved, Ms Koschnik had acted in a manner which amounted to misconduct which was serious. Further, by reason of her misconduct, Ms Fatania invited the panel to make a finding that Ms Koschnik's fitness to practise was currently impaired. Such a finding was justified, in Ms Fatania's submission, to protect the public and to uphold the public interest.
88. Prior to retiring to consider its decision on grounds and current impairment, the panel received advice from the legal adviser. In the course of that advice, the legal adviser referred to a number of authorities which included *GMC v Meadow* [2006] EWCA 1316 Civ, *Cohen v GMC* [2008] EWHC 581 (Admin) and *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) ('Grant'). The panel accepted the legal adviser's advice.
89. By her actions, the panel was satisfied that Ms Koschnik had breached the following applicable Standards:

Social Work England Professional Standards (2019)

6.1 - You must take all reasonable steps to reduce the risk of harm to service users, carers and colleagues as far as possible.

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.

7.1- You must report any concerns about the safety and well-being of service users promptly and appropriately.

7.4 - You must make sure that the safety and well-being of service users always comes before any professional or other loyalties.

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

9.4 You must declare issues that might create conflicts of interest and make sure that they do not influence your judgement.

90. Further, the panel was satisfied that, by her actions, Ms Koschnik had breached the following applicable Standards of Proficiency:

HCPC Standards of Proficiency (2017)

2.5 - be able to manage competing or conflicting interests

2.9 – Recognise the power dynamics in relationships with service users and carers, and be able to manage those dynamics appropriately.

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

3.4 - be able to establish and maintain personal and professional boundaries

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

15.1 – Understand the need to maintain the safety of service users, carers and colleagues.

91. Ms Koschnik had been found by the panel to have used, and to have attempted to use, SUA's bank card on multiple occasions following his death. She had provided a dishonest account of the circumstances in which she came into possession of the bank card, both to police and her employer. In so doing, the panel considered that Ms Koschnik's actions, which were serious, fell significantly below the standard to be expected of a registered social worker in the circumstances.

Finding and reasons on current impairment

92. In determining the issue as to current impairment of fitness to practise, the panel had regard to the following matters:
- The extent to which Ms Koschnik had the skills, knowledge and character to practise her profession safely and effectively without restriction; and
 - The wider public interest, which included the need to promote and maintain public confidence in social workers in England and the need to promote and maintain proper professional standards for these social workers.

93. At the outset, the panel considered the extent to which Ms Koschnik's misconduct was capable of remedy. The panel reminded itself that misconduct, which included dishonest conduct, as opposed to practice failings, could often be difficult to remedy. However, as a matter of principle, the panel was of the view that, with full insight and appropriate evidence demonstrating remediation, such misconduct was capable of remedy.
94. The panel considered whether Ms Koschnik's misconduct had, in fact, been remedied. The panel first of all addressed the issue as to whether there was evidence that Ms Koschnik was insightful into the seriousness of her misconduct.
95. During the course of the investigatory meeting which was held with BN on 3 March 2020, Ms Koschnik accepted that her use of SUA's bank card was not in compliance with her employer's policies and procedures. She stated: *'...looking back I would never have used his card, on reflection I shouldn't have. I was paying back what he owed as he wished, I had done lots of things for him.'*
96. In her written response, dated 24 October 2021, Ms Koschnik, reflecting on her actions stated:
- 'When I handed [SUA's] keys in I had completely forgotten about the card. it wasn't until a few days later when I find the card and remembered [SUA's] wish, where he said to take the money he owed me. In addition, if my intention was to defraud [SUA], I had the opportunity to do this during the 3 years I worked with him, however this did not happen, therefore it is clear that my motivations were not to steal from him in any way. Under normal circumstances I would have returned the card, but these were not normal circumstances ... Looking back on this it was a very unwise decision and not one I would make again.'*
97. In a previous Social Work England hearing, held before this substantive hearing, a portion of a transcript of that hearing was contained within the Social Worker Response Bundle. The transcript records Ms Koschnik saying:
- 'Going back to using [SUA's] card, I have admitted use of the card and at no point tried to conceal this. I understand this was unwise ... and would not do that again. Lending and borrowing was a custom and practice for me, combined with poor managerial oversight. Again, I would never do this again and new policies and procedures have been introduced by [the Council] as a result of my investigation. This will protect both clients and practising social workers and I will adhere to this.'*
98. From a careful analysis of the evidence presented at the hearing and, in particular, Ms Koschnik's responses at various stages in which she explained her actions, it was clear to the panel that she regretted her use of SUA's bank card. However, in the panel's estimation, Ms Koschnik's expression of regret was superficial. She had maintained throughout the proceedings that she had had a conversation with SUA and had taken possession of his bank

card which the panel had concluded was implausible. Ms Koschnik had attempted to explain and justify her actions within the setting of, what she described, was lax oversight on the part of her employer. Further, Ms Koschnik had, on occasions, suggested that her actions were attributable to cultural differences i.e. that she was acting so as to uphold SUA's dying wishes. The panel was not persuaded by Ms Koschnik's explanations. As a registered social worker, Ms Koschnik was personally accountable for her actions. The panel considered that Ms Koschnik, in her various accounts, had attempted to shift the blame for her wrongdoing onto others and to minimise the extent and seriousness of her misconduct. As a result, the panel considered that, while Ms Koschnik had demonstrated some evidence of insight, it was very limited. In addition, there was no evidence of remediation.

99. For these reasons, if presented with similar circumstances in the future, the panel considered that the risk that Ms Koschnik would repeat her misconduct could not be discounted. Accordingly, the panel concluded that a finding of current impairment of Ms Koschnik's fitness to practise was necessary to protect the public.
100. The panel next considered whether it was appropriate to make a finding of current impairment of Ms Koschnik's fitness to practise on public interest grounds, namely, the need to promote and maintain public confidence in social workers in England and the need to promote and maintain proper professional standards for these social workers.
101. Having carefully considered the matter, and the nature of the misconduct established in this case, the panel was satisfied that a finding of current impairment of Ms Koschnik's fitness to practise was required on public interest grounds. Not to make such a finding, in the panel's view, would seriously undermine the public's trust and confidence in the social work profession in England and would fail to promote and maintain proper professional standards.
102. The panel had regard to the formulation provided by Dame Janet Smith in her Fifth Report to the Shipman Inquiry, which was cited with approval by Cox J in *Grant*:

'Do our findings of fact in respect of the [the Social Worker's] misconduct, ... show that her fitness to practise is impaired in the sense that he:

- *Has in the past acted and/or is liable in the future to act so as to put a [service user] or [service users] at unwarranted risk of harm; and/or*
- *Has in the past brought and/or is liable in the future to bring the [social work] profession into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [social work] profession; and/or*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

103. The panel was satisfied that, looking backwards, all four limbs of the formulation in *Grant* were engaged. The panel was also satisfied that all four limbs were engaged in respect of Ms Koschnik's actions in the future.
104. Accordingly, the panel has decided, on public protection and public interest grounds, that Ms Koschnik's fitness to practise is currently impaired by reason of her misconduct.

Decision on sanction

105. Ms Fatania made a submission to the panel as to what, if any, sanction should be imposed. She submitted that the only appropriate and proportionate sanction for the panel to impose would be a Removal Order.
106. The panel accepted the legal adviser's advice on the approach to be adopted on the question of sanction and had regard to the Sanctions Guidance (updated 19 December 2022) ('the Guidance'), published by Social Work England and, in particular paragraphs 172-174 of the Guidance which addressed the issue of dishonesty. The panel also had careful regard to the documentary and oral evidence that had been presented at the hearing. The panel also carefully considered Ms Fatania's oral submission which it heard at the sanction stage of the proceedings.
107. At the outset, the panel considered the aggravating and mitigating factors.
108. The panel identified the following mitigating factors:
- Some very limited evidence of insight; and
 - With the exception of the Final Hearing, Ms Koschnik had engaged in the regulatory proceedings.
109. The panel identified the following aggravating factors:
- Breach of trust;
 - Pattern of unacceptable behaviour;
 - Risk of repetition; and
 - Lack of remediation.

The panel then considered, in turn, the range of available sanctions, starting with the least restrictive.

No Further Action/ Advice

110. Having regard to its findings, the panel was of the view that concluding the case by taking no further action or issuing Ms Koschnik with advice as to her future conduct would be insufficient to protect the public interest.

Warning

111. The panel noted that imposing a Warning on Ms Koschnik's registration would not restrict her ability to practise as a Social Worker. The panel carefully considered the circumstances in respect of which it would be appropriate to impose a Warning. The panel's judgement was that Ms Koschnik's misconduct was too serious and decided that a Warning would be insufficient to protect and uphold the public interest.

Conditions of Practice Order

112. The panel noted that the primary purpose of a Conditions of Practice Order was to protect the public while the social worker took any necessary steps to remediate their fitness to practise. The panel considered that a Conditions of Practice Order, was inappropriate in a case, such as this one, which addressed an attitudinal issue, namely, Ms Koschnik's dishonesty. The panel could not devise workable conditions that would address Ms Koschnik's misconduct that would not be tantamount to a suspension in all but name.

Suspension Order

113. The panel noted that a Suspension Order was appropriate where no workable conditions could be devised which would uphold the public interest, but where the case fell short of requiring removal from the Register or where removal was not an option.
114. The panel noted its findings in relation to the aggravating and mitigating factors, referred to above, and reminded itself that a Suspension Order is appropriate in cases where the registrant's misconduct, while serious, was not such as to be fundamentally incompatible with remaining on the Register.
115. The panel noted Ms Koschnik's previous good history. It also had in mind AB's evidence that, having been assigned to him in February 2016, Ms Koschnik had been effective in building up a good relationship with SUA. The panel also had in mind a reference from a person who knew Ms Koschnik from 2013 to 2015 when Ms Koschnik commenced employment as a newly qualified social worker. The reference attested to Ms Koschnik's personal qualities and professional attributes. However, the panel placed very limited weight on the reference. This was because it was written by a person who knew Ms Koschnik during a time before the events which had resulted in this referral. In addition, the reference did not address the circumstances giving rise to the Allegation.
116. Notwithstanding the matters weighing in Ms Koschnik's favour, the panel could not lose sight of the seriousness of the misconduct in this case. On repeated occasions, following his death, Ms Koschnik had used or attempted to use SUA's bank card to withdraw cash and to

purchase, or attempt to purchase, items for herself. She had given an account of the circumstances in which she claimed SUA who, at the time was close to death, had entrusted his bank card to her. When looked at in the context of the available evidence of other professionals who had attended upon SUA on the date in question, the panel was satisfied that Ms Koschnik's account of that exchange was plainly false. Ms Koschnik's insight was limited, partial and qualified. There was no acceptance of dishonesty on her part and no evidence of remediation was presented at the hearing. These factors, taken together with the extent of the departure from the standards to be expected of a registered social worker, led the panel to conclude that a Suspension Order was not an appropriate or proportionate response to the misconduct found in this case.

Removal Order

117. Social workers hold a privileged position which involves them caring for some of the most vulnerable members of society. They are entrusted to work autonomously and are expected to adhere to the highest professional standards. On this occasion, Ms Koschnik had departed significantly and fundamentally from those standards. In using, and attempting to use, SUA's bank card after he died and making up a false account as to how she came into possession of the bank card, Ms Koschnik had failed to act with honesty and integrity. Acting with honesty and integrity are the bedrock of social work. Ms Koschnik's actions, as found proved by the panel, struck at that bedrock, and had the potential to seriously undermine the public's trust and confidence in the social work profession.
118. For these reasons, the panel considered that Ms Koschnik's misconduct was such as to be incompatible with remaining on the Register.
119. The panel recognised the impact a Removal Order would have on Ms Koschnik and took this into account. However, it considered the public interest outweighed Ms Koschnik's interests. The panel concluded that the only sanction, which was sufficient to protect the public and uphold the public interest was a Removal Order.

Interim order:

120. Ms Fatania applied for an interim suspension order to cover the appeal period before the substantive order takes effect or, if an appeal is lodged, the period during which that appeal is disposed of, by hearing or otherwise.
121. The panel was provided, at this stage of the proceedings, with an email from Ms Koschnik, sent on 3 April 2023 at 19.28 hours, **[PRIVATE]**. The report was received after the panel had decided the sanction to be imposed and was of the view, in any event, that it had no bearing on the issues it had to decide upon at this stage of the proceedings.
122. The panel accepted the legal adviser's advice.
123. In light of its findings, the panel was satisfied that an interim order was necessary for wider public interest reasons, namely, to promote and maintain the public's confidence in social

workers in England and also to promote and maintain proper professional standards for these social workers.

124. The panel concluded that an interim conditions of practice order would be incompatible with its findings and the reasons given by the panel for considering that a substantive Conditions of Practice Order was inappropriate in the circumstances of this case.
125. The panel therefore decided that an interim suspension order for a period of 18 months should be imposed on Ms Koschnik's registration to cover the appeal period before the substantive order takes effect or, if an appeal is lodged, the period during which that appeal is disposed of, by hearing or otherwise.

Right of appeal:

126. Under Paragraph 16(1)(a) of Schedule 2 of the regulations, the social worker may appeal to the High Court against the decision of adjudicators:
 - 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.
 - the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
127. Under Paragraph 16(2) of Schedule 2 of the regulations an appeal must be filed before the end of the period of 28 days beginning with the day after the day on which the social worker is notified of the decision complained of.
128. Under Regulation 9(4) of the regulations this order may not be recorded until the expiry of the period within which an appeal against the order could be made, or where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.
129. This notice is served in accordance with Rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019 (as amended).

Review of final orders:

130. Under Paragraph 15(1), 15(2) and 15(3) of Schedule 2 of the regulations:
 - 15(1) The regulator must review a suspension order or a conditions of practice order, before its expiry

- 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

131. Under Rule 16(aa) of the rules a 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.

The Professional Standards Authority:

132. Please note that in accordance with section 29 of the National Health Service Reform and Health Care Professions Act 2002, a final decision made by Social Work England's panel of adjudicators can be referred by the Professional Standards Authority ("the PSA") to the High Court. The PSA can refer this decision to the High Court if it considers that the decision is not sufficient for the protection of the public. Further information about PSA appeals can be found on their website at: <https://www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/decisions-about-practitioners>.