

# Social Worker: Holly Sabga

## Registration Number: SW11173

### Fitness to Practise:

### Final Hearing

Date(s) of hearing: 17 April 2023 – 19 April 2023

Hearing Venue: Remote hearing

Hearing outcome: Fitness to practise impaired, Warning Order – 3 years

## Introduction and attendees

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018.
2. Ms Sabga did not attend the final hearing and was not represented.
3. Social Work England was represented by Ms Tamasin Graham, instructed by Capsticks LLP.

| Adjudicators | Role                    |
|--------------|-------------------------|
| Paul Grant   | Chair                   |
| Anne Rice    | Social Work Adjudicator |
| Deborah Hall | Lay Adjudicator         |

|                 |                         |
|-----------------|-------------------------|
| Natasha Quainoo | Hearings Officer        |
| Camilla Reed    | Hearing Support Officer |
| James Hurd      | Legal Adviser           |

## Service of Notice:

4. Ms Sabga did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Ms Graham that notice of this hearing was sent to Ms Sabga on 08 March 2023 by electronic mail, to the address on the Social Work Register (the Register). It was submitted that the notice of this hearing had been duly served.
5. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
  - A copy of the notice of final hearing dated 08 March 2023, addressed to Ms Sabga at her email address as it appears on the Social Work England Register;
  - An extract from the Social Work England Register detailing Ms Sabga’s registered email address;

- A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 08 March 2023 the writer sent by email to Ms Sabga at the address referred to above: Notice of Hearing and related documents.

6. The panel accepted the advice of the legal adviser in relation to service of notice.

7. Having had regard to Rules 13 and 43-45 of the Fitness to Practise Rules 2019 (hereafter “the Rules”) and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Ms Sabga in accordance with Rules.

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

8. Ms Graham, on behalf of Social Work England, made an application to proceed in the absence of Ms Sabga. She submitted that notice of this hearing had been duly served and no application for an adjournment had been made by Ms Sabga. It was unlikely that adjourning today’s proceedings would secure her attendance.

9. Ms Graham referred the panel to the telephone attendance note dated 13 April 2023, in which Ms Sabga confirmed that she would not be attending the final hearing but would be providing written submissions.

10. Ms Sabga subsequently provided written submissions. On the issue of her attendance at the final hearing, she says:

*First and foremost, please accept my sincere apologies at not attending this hearing. I have engaged fully in this investigation process, have openly communicated with Social Work England and attended a discontinuance panel in March 2023. However, this investigation process has had a significant impact on... [me] since December 2021, and I believe it would be detrimental to my health to attend this hearing in person. Please accept this letter as my submissions, along with my submitted reflections, responses and character references SWE have already received.*

11. Ms Sabga had engaged with Social Work England previously, including provision of:

- An initial response to the investigation dated 13 January 2021;
- An undated reflective piece;
- A response dated 19 May 2021 to the Case Investigation Report;
- A further response on 15 September 2021;

- e. Various references, pieces of feedback and evidence of recent training undertaken.

12. Ms Graham therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
13. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2003] UKPC*; *General Medical Council v Adeogba [2016] EWCA Civ 162* and *Sanusi v GMC [2019] EWCA Civ 1172*.
14. The panel noted that Ms Sabga had been sent notice of today's hearing and was satisfied that she was or should be aware of today's hearing. The panel considered all of the information before it, together with the submissions made by Ms Graham, on behalf of Social Work England.
15. The panel considered that Ms Sabga had clearly indicated that she was not going to attend the final hearing, in light of the evidence set out above. The panel had no reason to believe that an adjournment would result in Ms Sabga's attendance on a subsequent occasion. The panel concluded that Ms Sabga had deliberately and voluntarily absented herself from these proceedings.
16. The panel also concluded that it was in Ms Sabga's interests to proceed today, in order to bring resolution to an allegation which dates back to 2016. Although there is some potential for prejudice to Ms Sabga in not being able to give evidence, this is mitigated by the fact that she has provided written submissions.
17. Having weighed the interests of Ms Sabga in regard to her attendance at the hearing with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Ms Sabga's absence.

### **Allegation(s)**

18. The allegation arising out of the regulatory concern referred by Social Work England's Case Examiners on 05 January 2022 is as follows:

*Whilst registered as a social worker*

1. *You accessed Child 1's case file without professional reason and/or authority to do so on:*
  - a) *16 November 2016 at 11:59*
  - b) *16 November 2016 at 15:06;*
  - c) *17 November 2016 at 14:40;*
  - d) *18 November 2016 at 12:42;*
  - e) *23 November 2016 at 09:19;*
  - f) *24 November 2016 at 12:50;*
  - g) *25 November 2016 at 09:52;*
  - h) *28 November 2016 at 16:53;*
  - i) *29 November 2016 at 09:01; and*
  - j) *1 December 2016 at 09:07*
2. *On 1 December 2016 at 16:27 you attempted to access Child 1's case file without professional reason and/or authority to do so.*

*Your actions at paragraphs 1 to 2 amount to the statutory ground of misconduct.*

*Your fitness to practise is impaired by reason of misconduct.*

## **Preliminary matters**

### **Amendment to Allegation**

19. At the conclusion of the evidence, Ms Graham invited the panel to amend Allegation 1. The reason for this was a comparison between the dates when Ms Sabga is alleged to have accessed Child 1's records, as set out in the allegation 1(a)-1(j) and the audit screen shot in the exhibits bundle. It appears from the audit that there were two further occasions upon which Ms Sabga may have attempted to access the records, namely 28 November 2016 (11.51) and 30 November (14.05). SS in her evidence could not explain why these two additional viewings of the case files had not been included in her statement and ascribed this to "human error."

20. Ms Graham submitted that the panel had the power to amend the allegation, even though this was at the conclusion of the evidence and that there was no prejudice to Ms Sabga in doing so. This was because Ms Sabga had been provided with the audit results and had not challenged any of the specific dates or times shown. In addition, she had conceded that she had accessed Child 1's records, although without making any admission as to any alleged dates or times.
21. The panel refused the application to amend the allegation, for the following reason:
- (a) Ms Sabga was not present to raise any objection and/or to make any additional submissions,
  - (b) The panel was concerned that the late amendment, in the absence of Ms Sabga, could be perceived as being unfair,
  - (c) Critically, in the panel's view, there was little substantive or qualitative difference in the seriousness of the allegation, as between accessing the records on 10 occasions as opposed to 12 occasions. It could not be said that there was any "*under prosecution*" in not allowing the amendment in these circumstances.
  - (d) Whilst allowing the amendment might result in it better fitting the evidence, the panel determined, this factor was outweighed by the factors set out above, having undertaken a careful balancing of the public interest and fairness to Ms Sabga.

#### Documentation

22. The panel was provided with the following bundles of documents/evidence:
- (a) A Statement of Case from Social Work England of 11 pages
  - (b) A witness statement bundle of 14 pages,
  - (c) An exhibits bundle of 97 pages,
  - (d) Service and supplementary bundle of 23 pages,
  - (e) Social worker's response bundle of 32 pages,
  - (f) Proposed hearing timetable of 3 pages.
  - (g) Written Submissions provided by Ms Sabga, of 2 pages.

## Summary of Evidence

23. On 27 November 2020, Social Work England received a referral from Kent County Council (the “Council”) regarding Ms Sabga. She was employed by the Council as a substantive social worker in the Margate children’s social work team between 31 August 2016 and 29 March 2019.
24. Ms Sabga left her role in March 2019 in order to travel to Australia where it is understood she was keen to experience Australian social work. She returned to the UK at the start of the Covid-19 pandemic.
25. Ms Sabga was employed as an agency social worker through Connect2Kent within the Ramsgate children’s social work team between 29 April 2020 and 10 November 2020.
26. On 15 November 2016 Child 1’s case was referred to the Council. Child 1’s mother was Ms Sabga’s cousin.
27. On 17 September 2020 the Council received a complaint from Person A, the ex-partner of Child 1’s mother, in relation to Child 1’s case.
28. The Council investigated Person A’s concerns. The investigation showed that Ms Sabga had accessed Child 1’s case file on at least 10 occasions and had attempted to access it a further time, but access to it was denied.
29. As part of the investigation, SS spoke to Ms Sabga on 9 November 2020 to discuss her access to Child 1’s records.
30. Following the investigation, Ms Sabga was dismissed on 10 November 2020.

## Admissions

31. The panel noted that Ms Sabga has not complied with case management directions issued on 13 January 2023, which required her to indicate by 06 March 2023, which parts of Social Work England’s statement of case were admitted and those which remained in dispute, and by 20 March 2023 to raise any objections to the disclosure of Social Work England’s witness statements or exhibits.

32. However, Ms Sabga has admitted in broad terms that she did access the electronic records pertaining to Child 1 (pertaining to Allegation 1), including in her interview with the Council on 09 November 2020 and in her Initial Response to the allegation on 13 January 2021.
33. Ms Sabga's account is that she cannot remember why she accessed Child 1's records on multiple occasions but adds that she felt at the time that she had a professional duty in relation to her cousin's children and this was the only reason why she accessed the file. She does, however, accept that her actions were an "*error*" on her part.
34. Ms Sabga maintains that her actions were as a result of her inexperience and lack of awareness of the correct protocols. She maintains that this has never happened again in her practice and points to several examples of good practice since.
35. The panel had regard to the 2019 Rules (as amended) and in particular Rule 32(c)(i)(aa) which provides that where facts have been admitted by the social worker, the adjudicators or regulator must find those facts proved. However, there is no guidance as to what constitutes a formal admission in these circumstances.
36. The panel determined that it would not be right to proceed solely on the basis that a binding admission had been made in respect of each of the particulars of Allegation 1. There was in any event no admission in respect of Allegation 2. The panel had regard to the fact that Ms Sabga had not attended the hearing, her failure to return the case management directions, and the degree of ambiguity regarding precisely when she accessed the electronic files. Although she had stated in general terms that she had accessed the records, she has not indicated which of the specific dates alleged in Allegation 1(a) – (j), she admitted, and which, if any she disputed.
37. The panel concluded that it could however consider Ms Sabga's more general concession that she had accessed Child 1's records, when considering the evidence presented by Social Work England, and whether it found the allegations proved.

## Legal Advice

38. The panel has heard and accepted the legal adviser's advice and exercised the principle of proportionality at all times. In approaching the task of deciding the facts, the panel has kept at the forefront of its deliberations the importance of requiring Social Work England to prove matters against Ms Sabga. The standard of proof to which Social Work England is required to prove matters is the civil standard – on the balance of probabilities.

## Witnesses

39. The Panel heard oral evidence from two witnesses called on behalf of Social Work England:
- (a) SS – since 2017 a Service Manager for the Ramsgate social work teams within Kent County Council. She employed Ms Sabga as an agency social worker within the children's social work team between April and November 2020 and was involved in the investigation process following receipt of the complaint from Person A; and
  - (b) TM – since 2017 a locum social worker in the integrated children services team at Kent County Council working in their Integrated Front Door service. At the time of the events that form the basis of the Allegation, she was a social worker working in the children's services team at Kent County Council. She was allocated the case of Child 1 in November 2016.

## Finding and reasons on facts

### Allegation 1(a)- (j): Proved

#### Social Work England's evidence

40. The allegation is that Ms Sabga accessed Child 1's case file without professional reason and/or authority to do so on 10 occasions between 16 November 2016 at 11.59 and 01 December 2016 at 09.07, as set out in the Allegation above.
41. The allocated social worker on Child 1's case was TM. Ms Sabga would have no professional reason to access Child 1's electronic records.
42. SS's evidence is that as part of the investigation into Person A's concerns she undertook an audit of Child 1's case, to identify who had access to the records/files.

The Council operate an electronic record keeping system called Liberi. Service Managers, Team Managers and more senior Managers can run a function to see who has accessed a file and at what time. In each child's electronic records there are several headings which run down the side of the case record and include a heading labelled 'Audit'. This tab when accessed allows the reader to see who has accessed the file on which date and at what time.

43. The audit revealed that Ms Sabga accessed Child 1's case file 12 times, with her thirteenth attempt being denied (included the two additional records for 28 November 2011 and the 30 November 2011). The records, directly relevant to the allegation are set out below:

- 16 November 2016 at 11:59 and again at 15:06;
- 17 November 2016 at 14:40;
- 18 November 2016 at 12:42;
- 23 November 2016 at 09:19;
- 24 November 2016 at 12:50;
- 25 November 2016 at 09:52;
- 28 November 2016 16:53;
- 29 November 2016 at 09:01;
- 1 December 2016 at 09:07.

44. The case audit, however, is not specific enough to show how long the individual is accessing the file for.

45. SS spoke to MR, Service Manager, Management Information & Intelligence, Children, Young People and Education Services, who told her that if a person has gone into 'Person Details' on Liberi, they would have access to the child's main record, either through selecting a record via a person search or using an ID. They would have had to select the record and go into it, if they just did a person search for the record (without selecting it) that would not show on the audit report.

46. SS could not be sure what specific records were accessed, unless a particular form, case note etc was opened. So for example a social worker could select Case Notes and go into that, read the case summary which contains a lot of information but unless they open an actual case note this will not display on the audit report. However, once in the record, a person can navigate through all the menu items as well as items such as the case notes (which a lot of time can be read without having to open them). The individual could also see a list of any forms completed which would give an indication on the progress of a case, or level of involvement.
47. SS held a meeting with Ms Sabga, as part of her investigation on 09 November 2020. This was to discuss her conflict of interest with Child 1 and her accessing Child 1's records. The meeting took place via Microsoft Teams.
48. SS's evidence is that after she had explained the concerns, Ms Sabga was forthcoming in terms of what happened and knew exactly who and what she was talking about. Ms Sabga admitted to accessing the files of Child 1, contrary to the Council's policy and procedures, but did not go into any detail about which dates she viewed the files on.
49. Ms Sabga explained that Person A had '*caused trouble for her and her family*' and they were concerned about her cousin's relationship with him. Ms Sabga stated that Person A was quite abusive, that he had the potential to perpetrate domestic violence, that he was involved in private proceedings in relation to another child and that he had made threats and complaints against Ms Sabga's father. Ms Sabga said she was a newly qualified social worker at the time she had accessed these files and that now, with the benefit of experience, she would never repeat those actions.
50. SS's evidence was that Ms Sabga would have known about her professional obligation in regard to file access and disclosing conflict of interests because of the training the Council provides and the policies and procedures in place. The panel was referred to the Information Security Policy and the CYPE Inappropriate System's Access Policies.
51. SS confirms that Ms Sabga completed her General Data Protection Regulation (GDPR) training on 05 January 2017 and 23 May 2018 and her Information Governance

training on 5 January 2017 and 7 January 2019. This is confirmed in Ms Sabga's training records.

52. SS concludes that it is difficult for her to comment on what Ms Sabga may have known back in 2016 when she first came in to employment with the Council, as she was not known to her at the time when the conflict of interest occurred. Whilst she expressed the hope that these matters were covered in Ms Sabga's induction training, she was unable to say definitively that they were covered.

53. The Council's Liberi case management system provided by Liquid Logic has been in use since 2013. There is a clear security notice when Liberi opens. The panel has seen a screenshot of this, which reads:

*Security Notice*

*A computer record belongs to the person it relates to and you are only allowed to access it for professional reasons. Ask yourself if you would want someone accessing your or your relatives, friends or neighbours [sic] records for anything other than professional reasons during the course of their work. It is every individual's responsibility to respect the confidentiality of information recorded and to report to their manager any instances where this may have been contravened...*

54. SS's evidence is that as soon as you open Liberi, presented in large letters is a note that you are only allowed to access files for professional reasons. This also points out that it is an individual's responsibility to respect confidentiality and report to their manager if there is any event where this has been contravened. This would have popped up every time Ms Sabga opened Liberi.

55. SS's evidence was that the risks of looking at information from files in relation to a service user with whom a social worker has a personal connection is serious, as it brings the Council into disrepute. It has the potential to place people at risk of physical harm, and it may cause personal information to be inappropriately shared in places such as social media. Ultimately, it furnishes complaints from service users such as the one received from Person A which has brought the Council into disrepute.

Social Worker's Response

56. In her initial response to the investigation dated 13 January 2021, Ms Sabga set out her position:

*In relation to concern 1, I accept that on reflection I did not have authority to do so, however as detailed in my below response, at the time of the matter I believed I had a professional duty in relation to the welfare of the children. Please see below for a further response to the matter.*

*I started working for Kent County Council as a NQSW in September 2016. With KCC, I completed my ASYE year before leaving a permanent role in March 2019 to travel Australia. My ASYE year at KCC was somewhat difficult and I consistently reported throughout the year that due to a number of changes in management and my ASYE assessor, I unfortunately felt unsupported during the year which was well documented within supervision and other support groups for newly qualified social workers.*

*I accept in November 2016, two months into my NQSW year, I accessed a file of a family member. At the time, I was concerned for the wellbeing and the safety of the children involved. I was of the view that the children were at risk of significant harm living with a domestic abuse perpetrator and the social worker was not being told the truth.*

*I am aware from information provided by KCC that the audit trail evidences I accessed the file a number of times. I cannot recall the reasons as to why it was accessed a number of times however I do strongly state that I have never provided confidential information to any parties, nor did I access the file for any other reason other than being concerned for the children's safety and welfare.*

*Following this, I approached the allocated social worker TM, and informed her of my concerns regarding my family member, and that I had accessed the file. TM advised me that I should not have accessed the file and we discussed the correct protocol to follow, which I was unaware of at the time. As a NQSW I was unaware of the right process to go about my concerns and I was able to acknowledge and reflect on my mistake. TM agreed to contact IT to have me restricted from the file during our conversation.*

57. The panel has also seen the reflective piece written by Ms Sabga which addresses the allegation:

*Reflective Piece – Holly Sabga*

*I started working for Kent County Council in September 2016 where I completed my ASYE year. I left my permanent role to travel Australia in March 2019. I held a 6 month contact working as a Child Protection Practitioner for the Department of Health and Human Services. Following this, I was employed by the Australian Red Cross as an*

*Emergency Case Manager for the Bush Fire Relief Project. Due to Covid, I returned to the UK in March 2020 and returned to KCC as an agency worker in April 2020.*

*In November 2020, I was informed Kent County Council had received a complain in regards to an incident occurring in November 2016. In November 2016 I accessed a file of a family member. At the time, I was concerned for the well-being and safety of the children involved. I was aware the social worker was not being told the truth and felt the children were at significant risk. At the time, the children were living with a domestic abuse perpetrator whom I was aware was not allowed by the court to have contact with his biological child due to ongoing significant safeguarding concerns. I accessed the file and spoke to the allocated worker who advised me at the time I should not have accessed the file. As a NQSW I was unaware of the right process to go about my concerns and acknowledged my mistake. I shared I was unaware of the process as to how to do so but asked the allocated worker to be restricted from the file which she agreed to do so...*

### Panel's Conclusion

58. The panel found Charge 1(a)-(j) proved on the balance of probabilities. This was on the basis of the evidence set out above and in light of the admissions made by Ms Sabga. In particular the panel relied upon the findings of the audit. There was no evidence to undermine the veracity of the audit findings of multiple occasions when Child A's records were accessed without professional reason or authority.

### Allegation 2: Proved

#### Social Work England's evidence

59. The allegation is that Ms Sabga attempted to access Child A's case file without professional reason and/or authority to do so on 01 December 2016 at 16.27.
60. SS's evidence was that 01 December 2016 was the last time Ms Sabga had access to Child 1's files, as her access was denied to her at 16:27 due to the Management Information Unit ('MIU') 'locking down' the file to Ms Sabga.
61. The panel has seen the screen shot from the Council's case management system. This states: "Access Denied 01 Dec 2016. Holly Sabga – Thanet (Margate) CSWT 3".
62. This restriction request appears to have come from TM, Child 1's allocated social worker. SS asked MIU for further information about this restriction being put in place, but they

confirmed there was no more information, and they could not confirm the date/time that TM requested the restriction. However the screenshot from the Council's case management system indicates security restrictions on Child's 1 case file were modified at 11.42 on the 1 December 2016. SS surmised that the fact that TM requested the restriction to Child 1's files, suggests some awareness of the conflict of interest.

63. SS reviewed Ms Sabga's supervision notes for 2016. There is no evidence that Ms Sabga had discussions about a conflict of interest and data breaches with any manager or colleague after access to Child 1's files was restricted. It appears that the Council only became aware that Ms Sabga had accessed Child 1's files during the subsequent investigation.
64. TM's evidence was that in 2016 she was allocated to Child 1's case. She was instructed to do a Child and Family Assessment as well as to put a safety plan together for Child 1. She was unable to be any more specific as to the date when she was allocated the case.
65. She visited Child 1 in their home and completed their assessment. Thereafter she had no further involvement with the family.
66. TM knew Ms Sabga as they worked together in the same wider team. It was a managed team divided into three and she was under a different team to her.
67. Although TM could not recall the exact date, she did confirm a conversation had taken place, with Ms Sabga. This conversation was described as "*early on*" in her involvement in the case. Ms Sabga had told her that she was related to Child 1.
68. During the conversation TM told Ms Sabga that, as she was related to Child 1's family, she was not allowed to look at Child 1's file and she responded with 'okay'. In oral evidence, she was very clear that she had told Ms Sabga she should not access the records and that TM would restrict Ms Sabga's access to the case records. Ms Sabga did not disclose any information regarding whether she had already accessed Child 1's case records.
69. TM's evidence was that the procedure at the Council is that the file on the online system should be locked down when there is any connection between professionals and service users. The procedure is to also inform your manager as soon as you are aware of any

conflict of interest, such as a professional having a personal connection with a service user. She said that shortly after she spoke with Ms Sabga, she informed her manager that Ms Sabga had a personal connection to the family of Child 1.

70. Following this, either TM or her manager raised a query with the IT team at the Council and asked them to lock the file for Child 1 against Ms Sabga. However, she cannot recall the date that this query was raised or when this restriction occurred.

#### Social Worker's Response

71. Ms Sabga has not directly addressed Allegation 2.

#### Panel's Conclusion

72. The panel found Allegation 2 proved on the balance of probabilities. This was on the basis of the evidence set out above and in particular the screen shot of the Council's electronic case management system, recording the attempted access on 01 December 2016 at 16.27 hours, which was denied to Ms Sabga.

#### Findings and reasons on grounds

73. The panel had to consider whether Ms Sabga's actions amounted to misconduct in respect of the proven facts in Allegations 1 and 2.
74. The panel accepted the legal adviser's advice on the definition of misconduct. In particular, the panel paid regard to the definition given by Lord Clyde in *Roylance v General Medical Council* (No.2) [2000] 1 AC 311: "*Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances...*"
75. The panel also had regard to the guidance in *Nandi v GMC* [2004] EWHC 2317, where Collins J suggested that misconduct could be defined as: "*conduct which would be regarded as deplorable by fellow practitioners...*"
76. Ms Graham's written Statement of Case, sets out Social Work England's submissions on misconduct:

*42. The timespan for the alleged conduct proceeds the date, 2 December 2019, when the regulation of social workers in England transferred from the HCPC to Social Work England. Consequently, HCPC standards are engaged.*

*43. It is submitted that the Social Worker's conduct, if found proven, would put her in breach of the following HCPC Standards of Conduct, Performance and Ethics (August 2016):*

*1.1 You must treat service users and carers as individuals, respecting their privacy and dignity.*

*1.7 You must keep your relationships with service users and carers professional.*

*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.*

*And of the following HCPC Standards of Proficiency for Social Workers (January 2017):*

*7.1 Be able to understand and explain the limits of confidentiality.*

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

*44. This was not an isolated incident, but rather 10 occasions of unauthorised access to Child 1's file over a two-week period, in addition to the failed access on 1 December 2016.*

*45. On each and every time the Social Worker logged into the system and accessed these records, the system would have displayed a warning that access to files should only have been for professional reasons.*

*46. The Social Worker was therefore amply warned that her conduct was inappropriate and yet chose, for whatever reasons, to continue it until stopped by the IT department blocking her access to the file.*

*47. It is submitted that it is self-evident that the Social Worker failed to respect the privacy of Child 1, a service user, by her actions and is thus in breach of standard 1.1.*

*48. It is further submitted that by accessing the case file of Child 1, the Social Worker created a 'professional' relationship with Child 1 and their mother, where there had not been one previously. By virtue of the Social Worker's family ties and the inherent conflict of interest there was no way for the Social Worker to keep this relationship professional as standard 1.7 requires.*

*49. Social workers have access to highly sensitive personal information about service users and thus have an ethical, and legal, obligation to handle such information with the utmost of care. This includes an obligation not to access such information unless they have a professional need to. The public have a legitimate expectation that the personal information of service users is handled appropriately and only accessed by those with a professional reason for doing so. The Social Worker's conduct manifestly did not justify the public's trust and confidence in her and had the potential to undermine the public's confidence in the social work profession. It is therefore submitted that the Social Worker is in breach of standard 9.1.*

*50. Irrespective of any training she received, it is submitted that it should have been obvious to the Social Worker that there was a potential for a conflict of interest. The Social Worker admits that she did not inform her team manager, who would have been the appropriate person, of the potential conflict of interest. It is therefore submitted that the Social Worker is in breach of standard 9.4.*

*51. By the Social Worker's actions, she demonstrated that she did not understand the limits of confidentiality, thus putting her in breach of proficiency standard 7.1. Likewise, she showed that she did not recognise the need to manage records and all other information in accordance with applicable legislation, protocols and guidelines, thus putting her in breach of proficiency standard 10.2.*

*52. It is therefore respectfully submitted that the Social Worker's conduct, if found proven, is both serious and amounts to a significant departure from the professional standards detailed at above and that it therefore amounts to misconduct, as defined in Roylance v GMC.*

77. In oral submissions, Ms Graham reminded the panel of TM's evidence that she had told Ms Sabga that she should not access Child 1's records. However, Ms Sabga deliberately attempted to access the records thereafter, as found proved in respect of Allegation 2.

78. The panel also considered the contents of Ms Sabga's response to the Allegations, the contents of her Reflective Piece and her written submissions.

79. The panel concluded that the proven facts in relation to Charges 1 - 2 amounted to misconduct for the following reasons:

- (a) Ms Sabga's actions were serious. She accessed Child 1's records on 10 occasions over a relatively short period of time.
- (b) There was a clear breach of confidentiality surrounding service user records, which is of the utmost importance. The records would have contained sensitive personal information which Ms Sabga had no professional reason to access.
- (c) There was a security notice which would have appeared on the screen each time Ms Sabga sought to access the records, which is set out above. She would have known from the warning that it was not appropriate for her to continue to access Child 1's records.
- (d) TM's evidence was that she had clearly told Ms Sabga that she should not access the records, but Ms Sabga deliberately sought to do this again, despite TM having informed her that she would deny Ms Sabga's access to Child's 1 case records.
- (e) Ms Sabga's account is that she approached TM and disclosed that she had accessed the file and she was advised that she should not have done so and they discussed the correct protocol to follow. She fails to mention the fact that, thereafter and despite this clear advice, she sought to gain access again to Child 1's records, after the file had been "*locked down*". In addition, Ms

Sabga suggests in her Reflective Piece that she asked TM to restrict her access to Child 1's case records which TM agreed to do.

(f) The panel acknowledges that Ms Sabga was a relatively inexperienced social worker at the time she accessed Child 1's records. However, if she was unsure of the correct protocol to follow, and was concerned for the welfare of Child 1, she should have raised this issue with her manager.

(g) Ms Sabga would have been aware of the importance of confidentiality as a result of her social work training.

80. The panel concluded that Ms Sabga was in breach of the HCPC Standards of Conduct, Performance and Ethics, and in particular Standards 1.1, 9.1 and 9.4, as are set out above, in Social Work England's submissions.

81. The panel was unable to find that there was any breach of the HCPC Standards of Proficiency (January 2017) as set out in Ms Graham's submissions on behalf of Social Work England, because the misconduct in question dated from November – December 2016, prior to the updated standards taking effect in January 2017. In any case the panel was of the view that this was not a case of a lack of proficiency but rather one where Ms Sabga acted in a manner which she knew to be inappropriate.

### Finding and reasons on current impairment

82. The panel had to consider whether Ms Sabga's fitness to practise is currently impaired, in light of the finding of misconduct.

83. The panel had regard to the Social Work England guidance on impairment in the Sanctions Guidance (26 November 2019) and accepted the advice of the legal adviser. The panel has also exercised the principle of proportionality.

84. The panel is mindful of the forward-looking test for impairment.

85. The panel had regard to the submissions made on behalf of Social Work England in Ms Graham's opening note:

*55.It is submitted that the Social Worker's practice is impaired.*

*56.The Social Worker, in previous submissions, has pointed to her copious training since the index events as well as to several glowing professional and character references. She also relies on her alleged inexperience at the time of the index events as well as the lack of repetition since these events to support her position that her fitness to practise is no longer impaired.*

*57.As previously noted, social workers have access to highly sensitive personal information about service users and thus have an obligation to handle such information with the utmost of care. It is a key tenet of the social work profession that the personal information of service users is handled appropriately and only accessed by those with a professional reason for doing so and the public rightly expect this to be the case.*

*58.As such it is submitted that the public would expect a finding of impairment in this case so as to maintain public confidence in the regulation of the profession.*

*59.A finding of impairment would make it clear to the Social Worker and to the wider social work profession that unauthorised access to service users' personal records, in particular for personal reasons, is unacceptable.*

*60.It is submitted that a failure to find impairment would undermine public confidence in the maintenance of proper professional standards in the profession.*

*61.It is therefore submitted that the Social Worker's practice is impaired on the public interest limb.*

*62.Social Work England therefore submit that the Social Worker's fitness to practise is currently impaired by reason of misconduct.*

86. Ms Graham also made oral submissions on behalf of Social Work England:

- (a) She recognised that Ms Sabga had conceded that she was impaired in 2016. Social Work England's position is that this remains the case today.
- (b) On the personal limb of impairment she drew the panel's attention to Ms Sabga's attempt to access the records again, after her conversation with TM. She noted that in Ms Sabga's Reflective Piece she records that she "...asked the allocated to worker to be restricted from the file which she agreed to do so." Not only does Ms Sabga not address the fact she sought to access the records again thereafter, but her assertion she proactively sought to be restricted from the file, is inconsistent with her actions.
- (c) Ms Sabga's insight was not complete and there was an element of "minimisation".
- (d) Ms Sabga had undertaken some relevant training courses, but this was mandatory training, as opposed to proactively seeking out training to remedy her previous misconduct.
- (e) Ms Graham reiterated that Ms Sabga remained impaired on public interest grounds, given the seriousness of her actions. A well-informed member of the public would be shocked if no finding of impairment was made and public confidence in the profession would be undermined.

87. Ms Sabga's Initial Response to the Investigation (13.01.21) sought to address the issue of current impairment:

*As a more experienced worker in my career now, and looking back on my decision process in November 2016, I am able to reflect and recognise the mistake I had made. At the time I was inexperienced, unaware of the right process in relation to the situation, and held concerns for the safety of the children involved. From the conversation I had with the allocated worker at the time, I was aware of the error I had made. I acknowledge this and confirm this is not a decision I have ever made in my career again.*

*Since November 2016, I have completed a number of mandatory training in regards to confidentiality and data protection. I have completed this training to keep up to date during my role from 2016 - 2019, and following my return to KCC as an agency worker in April 2020. I have completed GDPR training when it came into force in 2018, and also as a returning worker in 2020. I have completed*

*mandatory training in all other roles I have undertaken since leaving Kent in 2019.*

*In terms of learning from what happened in 2016, I have always notified my manager if I was aware of a family who had been referred to the service. I have also contacted managers in other teams/districts to make them aware of a conflict of interest and requested myself to be locked out of the system when a permanent member of KCC staff and when returning as an agency worker.*

*Following my interview with my current employer, the London Borough of Bromley, I informed them of the current investigation by Social Work England. I had a separate interview for Tower Hamlets where I also notified them and was offered a position. I provided each Local Authority with a reflective document I had written regarding the incident in 2016 and I am able to submit this if it is also necessary.*

*I have previously been in group supervision settings (known as case progression within KCC) and have always declared conflicts of interests if families I know personally begin to be discussed in order to ensure their confidentiality and privacy. I am able to provide a reference from a team manager confirming I have done this if necessary. I also have a number of previous colleagues who are able to provide character references, if required. These colleagues have been party to case progression meetings and joint supervisions where I have raised such conflicts of interest.*

*During my permanent employment with KCC, in December 2018 a high profile case received large media attention. An email to the entire service was sent by the service manager, advising that a large number of social workers both in and out of the district had accessed the file and to not do so. To be clear, this is not something I did (which KCC could provide evidence of) and the email was generic to everybody. I was not one of the social workers who accessed the file, and this was due to the learning I received from the incident in 2016, and the training I had since completed...*

*... I am proud to be a social worker, and I feel privileged to be in a profession that works tirelessly to safeguard and protect vulnerable children and my employer references have always reflected that I have always maintained and upheld social work values. I have taken my learning and skills to Australia where I was employed within an Australian Family Services charity, statutory child protection services and working for the Australian Red Cross Bush Fire Response team before returning home due to Covid. I returned to work within KCC shortly after arriving back in the UK to support my social work colleagues and safeguard vulnerable children during a global pandemic. During my time qualified, I have never had any issues raised in regards to my practice, and have documents to evidence this from both colleagues and families I have worked with. Outside of the complaint pertaining to this incident that occurred in 2016, there have been no identified practice issues in the time I spent employed as an agency worker in KCC between April and November 2020.*

*The incident in 2016 occurred during the first 3 months of my ASYE year. I was an inexperienced member of staff and I have not only developed from this incident, but have put into practice my learning and reflection to ensure it has not been a decision I have ever repeated during my continuing career. Based on this, I am of*

*the view that my fitness to practice is not currently impaired nor has it been since the incident in 2016.*

88. Ms Sabga also addressed this issue in her reflective piece:

*As a more experienced worker now and looking back on my decision process in November 2016 I am able to reflect and recognise the mistake I had made. I was inexperienced and concerned for the safety of the children, and was unaware of the right process to follow regarding this. From the conversation I had with the social worker at the time informing me of what I had done wrong, I acknowledge this and it is not a decision I have made again in my career. I am deeply remorseful for my mistake.*

*I have completed a number of mandatory training in regards to data protection, confidentiality and GDPR. Prior to leaving KCC in 2019 when I was a permanent member of staff, I have been included in emails sent across the service by the service manager reminding staff members not to access a file that was at the time high profile and in the media. This is not something I did and the email was generic to everybody. I also highly regard confidentiality in respect of my colleagues, and prior to leaving KCC in 2019, on a team away day I interjected to a staff discussion whereby personal business of a colleague was being discussed without her knowledge. I was approached by several staff members to apologise the following day, and commended at the time by the service manager for speaking out.*

*In terms of my learning from the incident in 2016, I have always notified my manager if I was aware of a family who had been referred, and contacted managers/social workers directly to be restricted from the file. I have also shared knowing families in arenas such as supervision and case progression meetings. I have a glowing reference from my manager in 2019 who has confirmed I can use this as evidence there has never been any concerns regarding my practice, and have a number of colleagues and associates who are willing to provide character references.*

89. The panel received written submissions from Ms Sabga:

*...I would like to use this opportunity to apologise for my actions that have led to this investigation and my fitness to practise to be questioned. I am deeply ashamed and regretful for my conduct that has brought the profession into disrepute. Following the initial referral made to SWE by Kent County Council, this investigation has not only provided me with time to reflect on my actions, but to build resilience and grow from my learning within my career. Whilst this investigation process has caused stress and anxiety in almost every aspect of my life, it has also provided me with resilience and drive to continue practising as a social worker and support the most vulnerable people within society.*

*Whilst this investigation has continued, I have been permitted to continue practising as a registered social worker and did not receive any suspension from SWE. I have*

*re-registered with Social Work England on three occasions whilst this process has been ongoing. I have reflected on not just my practice, but my mistakes and my learning from this within all of my submitted CPD reflection logs. I have engaged in mandatory training in respect of confidentiality and GDPR. During this process, it has also caused me to reflect on my career and if this is a road I would wish to continue travelling on. I have continued to practise in a front line child protection team. I qualified in this profession in 2016 and have continued to practise in a front line role, both in Australia and the UK. Social work is my passion. Whilst the profession regularly attracts negative media, with high turnover of staff and the impact of the covid pandemic, it is a field I wish to continue to work in, and support the most vulnerable families to thrive.*

*In respect of the incident itself, I respectfully refer the panel to my already submitted responses. I maintain my position that this incident was during a period of time as a newly qualified social worker. Regrettably, I was not in a position of confidence or fully knowing the process, or the repercussions for such actions. I maintain my concern for the children being my motivation although recognise my actions were wholly inappropriate and not the right conduct to demonstrate. I am extremely remorseful for this and believe at the time, my actions were fuelled by my emotions. There has not been a repeat of my actions and this is therefore not a repeated concern throughout my career. I have progressed to a level of senior social worker within my career and ensure the panel, this conduct has not, and will not be, repeated since 2016. I am aware from the documentation I have reviewed in this process that there were no other concerns raised in respect of my practise. In addition, during the discontinuation hearing, legal representatives for SWE advised there was no evidence I had shared any information and my actions following were sensible.*

*Throughout this process, I have engaged entirely with social work England. I have provided submissions, reflections and character reflections. I do not believe I have, in any of my communication with SWE, been dishonest in regards to my actions. I would also state that I was not dishonest in my conversations with Sarah Spencer, or the allocated social worker at the time. At the time, I brought this issue to the allocated social workers attention. I do not believe I would have done so, if I had not recognised I was wrong. The panel will be aware that this investigation has been ongoing since 2021. There have been significant periods of time, where I have not received any communication from SWE, left feeling anxious or in limbo over a career I have worked hard to achieve and I am proud of. Furthermore, the process has been confusing, with decisions made and then retracted, allegations added and discontinued, but this has not led me to disengage at all. If anything, this process has not only enabled me to reflect on my practise, but also how I engage with families in social work. I have developed my ability to be more compassionate and understanding of those going through stress. In my engagement with newly qualified peers and other professionals, I prioritise confidentiality, taking into account the learning I have achieved from my actions.*

*I wish to make clear that I accept my conduct and fitness to practice at the time of this incident in 2016 was impaired. I understand the implications of my actions at the time and wish to assure the panel this has not reoccurred since. I hope to*

*continue to practise in a profession I feel so passionate about and welcome any support, training or areas of development I could access and engage in.*

90. The panel also had regard to the contents of the Social Worker's response bundle and in particular character references and testimonials in the form of witness statements from:

- (a) AW, dated 27.01.21 (Ms Sabga's cousin)
- (b) PH dated 29.03.19
- (c) A handwritten undated reference from a service user.

#### Panel's decision on Impairment

91. The panel concluded that Ms Sabga's current fitness to practice was not impaired on the personal limb of impairment, although this was a finely balanced decision. The panel reached this conclusion based on its consideration of the matters set out below:

- (a) Ms Sabga has been aided by the passage of time since the misconduct in 2016. There is no evidence of any other regulatory concerns, or that she has breached confidentiality by accessing records for service users where she had no professional reason to do so, in the period since, extending over a six year period.
- (b) Ms Sabga was a newly qualified social worker at the time of the misconduct.
- (c) Ms Sabga has expressed genuine remorse for her actions.
- (d) The panel concluded that the risk of repetition was low and that her experiences have been a salutary lesson to her. Ms Sabga has provided some examples in her Reflective Piece of how she has since notified her manager if she is aware of a family who had been referred and has proactively sought to be restricted from the file.
- (e) There is evidence of insight, albeit this is not as well developed as it could have been, particularly in relation to the effect of her misconduct on her

colleagues and difficulties which may have been caused working with Child 1's family after Person 1's complaint.

- (f) It would have been helpful had Ms Sabga provided a reference from her current employer.
- (g) Ms Sabga has undertaken relevant training and the panel did not hold it against her that this was mandatory training.
- (h) In summary, although Ms Sabga's actions in the past had brought the profession into disrepute and breached a fundamental tenet of the profession, the panel's view was that this is not liable to happen again in the future, for the reasons set out above.

92. However, when considering the public interest element of impairment, the panel took the opposite view and concluded that there was clear evidence of current impairment for the following reasons:

- (a) Ms Sabga's misconduct was serious, and repeated, albeit over a short period of time. Ms Sabga knew or should have known that her actions were wrong, but she repeated them.
- (b) A well-informed member of the public would be shocked to find that a service user's records had been accessed, without a professional reason to do so, on ten occasions, despite the security warning which appeared on the screen, on each occasion access was sought.
- (c) The misconduct was aggravated by the further attempt to access the records, after the conversation with TM, despite the explicit warning not to do so.
- (d) Ms Sabga's actions have brought the reputation of the social work profession into disrepute.
- (e) Moreover, she breached a fundamental tenet of the social work profession namely the requirement for confidentiality. Service Users must have confidence that private and sensitive information remains confidential and only accessed by those with a professional reason to do so.
- (f) The panel also had regard to the need to uphold and declare proper standards of behaviour, in concluding that the public component of impairment is clearly established.

- (g) Confidence in the social work profession would be undermined, if there was no finding of impairment, given the nature of the misconduct which has been identified.

93. In summary, the panel found Ms Sabga's fitness to practise to be currently impaired on public interest grounds.

### Decision on sanction

94. The panel heard submissions from Ms Graham on behalf of Social Work England, in relation to sanction. She submitted that the appropriate sanction was a 3-year warning order. She made the follow points:

- (a) This case was not suitable for no further action. The panel was referred to paragraph 72 of the Sanctions Guidance from Social Work England. This case was not exceptional, and the finding of impairment alone would not be sufficient to mark the wider public interest.
- (b) A warning order is more suitable than an advice order, having regard to the aggravating features of the case. This included the repeated access to Child 1's case file and the further attempt to access the records, following the conversation with TM.
- (c) A 3-year warning order was appropriate, given the seriousness of Ms Sabga's misconduct. The panel was reminded of its findings that Ms Sabga's actions had brought the profession into disrepute and that she had breached a fundamental tenet of the profession, namely confidentiality.

95. The panel carefully considered the aggravating and mitigating features in this case.

96. The panel concluded that the aggravating features in this case are:

- (a) Ms Sabga's actions were not isolated. She had accessed Child 1's records on 10 occasions over a relatively short period.

- (b) Ms Sabga had attempted to access Child 1's records again after she had been told that she should not do so by TM.

97. The panel identified the following mitigating features:

- (a) Ms Sabga was a newly qualified social worker at the time of the misconduct, being only 3 months into her ASYE year,
- (b) She had demonstrated genuine remorse,
- (c) There is no evidence of repetition. Ms Sabga worked at the Council without further incident until 29 March 2019. She returned to work for the Council, on an agency basis, in April 2020, following her return from Australia before these matters came to light in November 2020.
- (d) Ms Sabga admitted that she had accessed Child 1's records at the first opportunity.

98. The panel has carefully considered what type of order should be imposed, starting with the least severe sanction. It has taken into account the principle of proportionality and balanced the rights of the public and the rights of Ms Sabga to practise in her chosen profession. The panel accepted the advice of the legal adviser and had regard to the Sanctions Guidance.

99. The panel further reminded itself that the purpose of a sanction was not to punish the individual practitioner but to protect the public and the wider public interest.

100. In light of the misconduct, the panel concluded that it would not be appropriate to take no further action. The panel had regard to the Sanctions Guidance. This case was not exceptional. It might have been different if this had been a single isolated viewing of the records which Ms Sabga had admitted to her manager immediately thereafter.

101. Although there was no impairment on public protection grounds, the panel took the view that the finding of impairment alone was not sufficient to protect the wider public interest. Ms Sabga's actions were serious and had implications for both her former colleagues and the wider profession.

102. The panel considered whether it would be appropriate to impose an advice order but concluded that Ms Sabga's actions were too serious for such an order. The panel had regard to paragraph 77 of the Sanctions Guidance. An advice order should set out the steps which the social worker should take to address any shortfall in their conduct or performance contributing to the concern. The panel's view was that an advice order would be more appropriate for a case of a mistake or misunderstanding. Ms Sabga knew what was expected of her in relation to confidentiality and deliberately breached those standards. In short, the panel concluded that a more severe sanction was required to mark the seriousness of Ms Sabga's conduct, and to uphold the public interest and wider confidence in the profession.

103. The panel next considered a warning order and concluded that this was the appropriate sanction. The panel concluded that this case fell within the guidance as set out in paragraph 78 of the Sanctions Guidance:

*A warning order is a signal that any repetition of the behaviour that led to the concern is highly likely to result in a more severe sanction. A warning order implies a clearer expression of disapproval of the social worker's conduct or performance than an advice order.*

104. A warning order was appropriate having regard to the nature of Ms Sabga's misconduct and the need to send a clear message to the public and the profession that any breach of confidentiality, such as accessing service user records without a professional reason to do so, will be treated seriously by the regulator, in seeking to uphold professional standards.

105. The panel considered the appropriate length of the warning order and had regard to paragraphs 80-82 of the Sanctions Guidance. One year was insufficient. This was not an isolated incident of relatively low seriousness. Equally, this was not a serious case which had fallen only marginally short of requiring a restriction in Ms Sabga's registration. Therefore, a warning order for a 5-year period would be disproportionate.

106. The panel concluded that a warning order for a period of 3 years was appropriate, having regard to paragraph 81 of the Sanctions Guidance:

*Three years may be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers. The period also allows more time for the social worker to demonstrate that they have successfully addressed any risk of repetition.*

107. A 3-year warning order was sufficient to mark the seriousness of Ms Sabga's misconduct, to maintain public confidence in the profession and to send a clear message regarding professional standards.

108. Having arrived at an appropriate sanction, the panel concluded that to impose the more restrictive sanction of a conditions of practice order would be unnecessarily punitive and disproportionate. The Sanctions Guidance states that conditions are less likely to be appropriate in cases raising wider public interest issues and most commonly applied in cases of lack of competence or ill health. Having only found impairment on the basis of the wider public interest the panel would not have been able to formulate any workable or practicable conditions, having reached the conclusion that the risk of repetition was low. The public interest issues in this case were adequately addressed by a 3-year warning order.

## Right of Appeal

109. Under paragraph 16 (1) (a) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social worker may appeal to the High Court against the decision of adjudicators:

- (i) to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
- (ii) not to revoke or vary such an order,
- (iii) to make a final order.

110. 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.
111. 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.
112. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.