

Social worker: Luisa Demarco
Registration number: SW101451
Fitness to Practise
Final Hearing

Dates of hearing: 25 April 2023 to 28 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 (as amended) (“the Regulations”).
2. Ms Luisa Demarco attended and was not represented.
3. Social Work England was represented by Ms Rebecca Steels, barrister instructed by Capsticks LLP.
4. The adjudicators (hereinafter “the panel”) and other people present at the hearing are set out in the table below.

Adjudicators	Role
Alexander Coleman	Chair
Natalie Williams	Social worker adjudicator
Sandra Norburn	Lay adjudicator

Elle Langdown	Hearings officer
Gabriella Berettoni	Hearings support officer
Natalie Amey-Smith	Legal adviser

5. The identification of the witnesses in this case are as follows:
 - Person M, who at the time of the allegations was the MASH Service Unit Manager at Tameside Metropolitan Borough Council (the “Council”).
 - Person R, who at the relevant time was a Risk, Insurance and Information Officer at the Council.
 - Person A, who at the relevant time was a Human Resources Manager at the Council.

Allegations:

6. The allegation arising out of the regulatory concerns referred by the Case Examiners on 17 September 2021 is:

Whilst registered as a social worker between June and December 2020 you:

1. Accessed social care case records without authority or professional reason to do so with regards to the following individuals:

1.1 ‘SO’

1.2 ‘HO’

1.3 ‘KDC’

2. Did not give a true account with regards to your access of the records set out at paragraph 1 when challenged.

3. Your conduct at paragraph 2 was dishonest.

4. attempted to access your own social care records without authority or professional reason to do so.

5. did not ensure that your laptop was kept secure, meaning case records could be inappropriately accessed.

The matters outlined in regulatory concerns (1), (2), (3), (4) and (5) amount to the statutory ground of misconduct.

Your fitness to practice is impaired by reason of misconduct.

Admissions:

7. Rule 32c(i)(aa) Fitness to Practise Rules 2019 (as amended) (the 'Rules') states:
'Where facts have been admitted by the social worker, the adjudicators or regulator shall find those facts proved.'
8. Following the reading of the allegations the panel Chair asked Ms Demarco whether she admits any of the allegations.
9. Ms Demarco informed the panel that she admits allegations 1.1;1.2;1.3;2;3 and 4. Ms Demarco said that she denies allegation 5.
10. In line with Rule 32c(i)(a) of the Rules, the panel were required to go on to determine the disputed fact at allegation 5. However, Ms Steels stated that she had a preliminary application to make in response to Ms Demarco's partial admissions.

Preliminary matters:

11. Ms Steels made an application for partial discontinuance seeking to discontinue allegation 5. Ms Steels referred the panel to the relevant Rules and the Social Work England guidance on discontinuance. Ms Steels acknowledged that the case law requires panels to play an active role in determining the application and therefore she set out the background facts to the case as follows.
12. On 24 November 2020, Social Work England received a referral regarding Ms Demarco. The referral was made by Person A.
13. Ms Demarco was employed at the Council between 15 August 2016 and 14 March 2019 and returned as an agency worker between 1 June 2020 and October 2020.
14. On 23 October 2020, Person M was informed by Ms Demarco's manager that a referral was being made [PRIVATE]. As a result of this, Ms Demarco's file on the Council's online system, Liquid Logic, was looked at by Person M.

15. It was noted that Ms Demarco had attempted to access her own file earlier in the day, but the access had been denied. Further investigation was then undertaken in relation to Ms Demarco's access to files on Liquid Logic. It was found her account had accessed SO and HO's files on 25 June 2020 and 30 June 2020, and KDC's file on 30 June 2020. **[PRIVATE]**
16. The Council formed the view that this access by Ms Demarco to these files was unauthorised and not for a professional reason. As such, the matter was referred to the Council's information officer, and the human resources department, and it was investigated by Person R and Person A, leading to the referral to Social Work England.
17. In relation to the partial discontinuance Ms Steels submitted that the evidence which had been relied upon to support allegation 5 is that Ms Demarco had told the Council, during its internal investigation, that she did on occasion leave her laptop unlocked whilst working **[PRIVATE]** and she further accepted doing so in an email to the Council on 21 Feb 2021. This endorsed the account provided by SO to Person A as part of the Council's internal investigation, that it was he who accessed the files in question on 25 and 30 June 2020. All these documents were provided by Ms Demarco to Social Work England in the course of the Social Work England investigation, indicating that this was the stance maintained by Ms Demarco until October 2022.
18. Ms Steels submitted that in October 2022 there was a change in the evidential position such that there is no longer a realistic prospect of proving the alleged facts underpinning allegation 5, and as such impairment cannot be found in relation to this allegation. This is the basis for the application being made by Social Work England to discontinue the proceedings in part, only in respect of allegation 5.
19. Ms Steels submitted that there is no longer a realistic prospect of proving the alleged facts for the following reasons:
 - Ms Demarco now states that it was she who accessed the records of SO, HO, and KDC in 2020. This would remove evidence that she left her laptop unlocked and that was how SO accessed it as she is now saying that it was she who did so.
 - This tallies with Social Work England's evidence supporting that it was unlikely to have been SO accessing the records. Person M has provided evidence that it is not credible that it was SO (someone unfamiliar with Liquid Logic) accessing the files. This is due to the speed at which the files were accessed, as seen in the access logs and the complexity in using the system, as explained by Person M's statement and evidence. Person M's evidence is that an unfamiliar person would not have been able to navigate the system in the way seen in the access logs, and that therefore it must have been Ms Demarco who accessed the files.
 - Without Ms Demarco's argument that it was SO who accessed the files, there is no evidence to support unauthorised access by anyone else and as such, Social Work England submits there is no realistic prospect of proving that Ms Demarco left her laptop unsecure.

20. Ms Demarco did not accept that she had only informed Social Work England of her change in position in October 2022, indicating to the panel that she had emailed her acceptance in June 2021. However, Ms Demarco agreed with submissions of Ms Steels in relation to the partial discontinuance and asked that the panel discontinue part 5 of the allegation.
21. The panel heard and accepted the advice of the legal adviser in relation to the admissions made by Ms Demarco. The legal adviser reminded the panel that in the interests of fairness it should ensure that it is satisfied that Ms Demarco has not made the admissions for reasons of duress or expediency and that the admissions accord with the evidence before the panel in relation to the allegations.
22. The panel also heard and accepted the advice of the legal adviser in relation to partial discontinuance which included reference to the '*Social Work England Discontinuance guidance*' dated 16 December 2022. The legal adviser made reference to the case of *Ruscillo v Council for the Regulation of Healthcare Professionals [2002] EWCA Civ 1356* and the case of *PSA v NMC and X [2018] EWHC 70 (Admin)*, in particular paragraph 57 of the Judgement in which Mrs Justice Laing BDE states '*I consider that it is especially important, if the NMC considers that it is appropriate to offer no evidence, that it fully opens the case, so that the Committee is able to make a decision, informed by a sufficient knowledge of the facts, whether it is appropriate for the NMC to offer no evidence, or whether it should require the NMC to reconsider that view, and try and obtain more evidence*'.

Finding and reasons on facts:

23. The panel considered that the admissions made by Ms Demarco are unequivocal. The panel therefore found allegations 1.1;1.2;1.3;2;3; and 4 proved by way of Ms Demarco's admissions.
 1. Accessed social care case records without authority or professional reason to do so with regards to the following individuals:
 - 1.1'SO' **FOUND PROVED**
 - 1.2'HO' **FOUND PROVED**
 - 1.3'KDC' **FOUND PROVED**
 2. Did not give a true account with regards to your access of the records set out at paragraph 1 when challenged. **FOUND PROVED**
 3. Your conduct at paragraph 2 was dishonest. **FOUND PROVED**
 4. attempted to access your own social care records without authority or professional reason to do so. **FOUND PROVED**
 - ~~5. did not ensure that your laptop was kept secure, meaning case records could be inappropriately accessed.~~ **DISCONTINUED (see below)**

Finding and reasons on partial discontinuance

24. The panel took account of the submissions of both Ms Steels and Ms Demarco. The panel next considered whether it had been provided with all the relevant information that properly reflects the evidential position and whether on balance that provided insufficient evidence for there to be a case to answer in relation to allegation 5. The panel reviewed the evidence provided in the bundle which included: Ms Demarco's response to the Council dated 6 December 2020; Ms Demarco's email to Social Work England on 23 February 2021; SO's statement dated 6 December 2020; Ms Demarco's response to the Allegations dated 4 October 2022; and Person M's statement and exhibits.
25. The panel took into account that Ms Demarco has now admitted accessing these social care records herself and no longer contends that it was SO who had done so. The panel took into account Person M's statement which notes that in her opinion *'the person using the Liquid logic system at the times shown in Exhibit LM7 & LM8 must have been someone with a working knowledge of the system.'* Person M states that she does not *'believe that a novice user of the system would be able to access the files and contact records so quickly'* due to the steps she describes in her statement. The panel decided that Ms Demarco's change of stance in relation to the accessing of records means that Social Work England no longer have evidence to support that it was SO who accessed the laptop and files. The panel considered that based on the statement of Person M, it was unlikely to have been SO who accessed the records given the speed at which the records were accessed. The evidence therefore accords with it being Ms Demarco who did, as she now admits, access the records.
26. The panel agreed with the submissions of Social Work England that in these circumstances there is no realistic prospect of proving the facts of allegation 5. The panel therefore decided that allegation 5 is discontinued. The Panel was also satisfied that discontinuing allegation 5 would not result in an under prosecution of the Social Work England case.

Finding and reasons on ground and current impairment:

27. Ms Steels indicated that she would not be calling the Social Work England witnesses. Ms Demarco did not require any of the witnesses to be called. The panel was content with this approach and did not have any questions for the Social Work England witnesses.
28. Ms Demarco said that she wanted to give evidence on affirmation in relation to misconduct and impairment and to explain the circumstances at the time of the allegations.
29. The panel was aware from Ms Demarco's written submissions that some aspects of her evidence might include evidence [PRIVATE]. The panel had regard to the vulnerability, interests and welfare of Ms Demarco and the public interest including in the effective pursuit of Social Work England's over-arching objective. The panel kept in mind that there is a strong public interest in ensuring that hearings are conducted in public for transparency. However, the panel took into account that the purpose of a hearing is to conduct a fully comprehensive inquiry into the concerns raised about the fitness to practise of a social

worker. Anything that could inhibit the panel from conducting such an inquiry is a risk to the public interest. The panel therefore decided that any information about **[PRIVATE]** should be heard in private.

Ms Demarco's oral evidence

30. Ms Demarco gave oral evidence under affirmation. Ms Demarco was aware that giving evidence under affirmation allowed the panel to place more weight on the evidence. She was also aware that by giving evidence she could be cross-examined by Ms Steels on behalf of Social Work England. Ms Steels did ask questions of Ms Demarco as did the panel.
31. The information contained here is a summary of the key points which Ms Demarco addressed in her evidence and is not a verbatim account of what she said.
32. Ms Demarco said that the Council had **[PRIVATE]** Ms Demarco said that she already had concerns about the Council at this stage as they had shared her confidential information with staff members and Ms Demarco had raised this as a breach of confidentiality.
33. **[PRIVATE]** Ms Demarco's manager informed her that that a social care referral would be made**[PRIVATE]**. Ms Demarco did not consent to that and felt deeply embarrassed. She subsequently discovered from the contact records **[PRIVATE]**. Ms Demarco said that this had resulted in her having ill feeling towards the Council.
34. Ms Demarco said that the perceived way in which she was treated by the Council meant that at the outset she was unable to accept responsibility for her own actions in accessing records and being untruthful about that. She said that she had panicked and was not thinking rationally. Ms Demarco told the panel that it has taken her a long time to be able to reflect due to the barrier she had put up and this had then made things so much worse.
35. Ms Demarco talked about the guilt she felt because of the **[PRIVATE]**.
36. Ms Demarco said that in June 2021 she emailed Social Work England to accept the concerns and was unhappy that the admissions were not referenced in the Case Examiners report in November 2022. Ms Demarco reflected that at the time of the allegations her practise was impaired and that she made huge mistake which at first she did not accept responsibility for. Since then, she has continued to practise as a social worker for two and a half years in challenging child protection roles including undertaking court work. Ms Demarco said that there have been no further concerns raised about her practice and drew the panels attention to the references from colleagues and professionals included in the bundle.
37. Ms Demarco said that she is remorseful, she did not uphold professional standards, and this impacts negatively on the reputation of social workers. In reflecting, she has learnt about herself and her struggles to accept when she has done wrong as she likes to get things right. Ms Demarco said that she had been able to put her reflections into practice as she recently made a mistake by giving the wrong information, but she realised and alerted her manager and accepted responsibility for her error.
38. Ms Demarco referred the panel to the bundle which contains details of training courses which she has completed in relation to data protection and professional standards. Ms

Demarco said that since the time of the allegations she has continued to do good social work with families and dishonesty is not part of her practice or a character trait. She believes that the circumstances she was in at the time of the allegations impacted on her decision making and it is not who she is or how she practises.

39. In response to questions from Ms Steels, Ms Demarco confirmed that she has been a social worker for about eight years. Ms Demarco said that she lived and worked in the Council area and when she was an employee, she would always alert managers if she knew a family who had been allocated to her. Ms Demarco said she was aware from her early training that workers should not hold cases in relation to people they know due to safety and the potential to impact on professional judgement and decision making. Ms Demarco said the Council took this seriously and would re-allocate any cases with conflicts until she returned as an agency worker then it was just expected she would manage them.
40. Ms Demarco said that the **[PRIVATE]** Ms Demarco accepted that her access to SO, HO and KDC's file had occurred prior to **[PRIVATE]**. In relation to access to her own file Ms Demarco said that this was because of the data breaches she believed had occurred at the Council and so she wanted to confirm that her Liquid Logic record was locked. Ms Demarco accepted that her actions were the wrong thing to do.
41. In relation to accessing the records of SO, HO and KDC, Ms Demarco said that there is no explanation as to why she accessed those. She knew it was wrong and she had no professional reason to do what she did and would not repeat this conduct. Ms Demarco said that she had undertaken numerous data protection training courses at different Local Authority's due to being an agency worker and she is fully aware of the importance of data protection and confidentiality. She accepted that her actions in accessing the records was not because of a lack of training or knowledge.
42. Ms Demarco accepted that it had taken her some time to be honest about her actions but that there were **[PRIVATE]**.
43. Ms Demarco said that she did tell Social Work England in June 2021 that she accepted the concerns. In October 2022 when the information was sent to her about the allegations and set out more clearly, she reflected and realised allegation 5 was not true so she changed her admission on that to a denial.
44. In relation to the references she has provided Ms Demarco said that any managers were and are aware of the allegations but that external agencies such as CAFCASS are not.
45. Ms Demarco told the panel that the completion of the professional standards course had been helpful in refreshing her knowledge and allowing her to reflect on how her practice in relation to the allegations had diverted from what is required by the standards. She acknowledged her behaviour undermines confidence in a profession where there is already a distrust, and her actions would add to that distrust. In relation to accessing information of others, Ms Demarco said this would be distressing for the people involved and undermine public confidence, trust being an essential part of the role that social workers do.

46. In response to the panels questions Ms Demarco spoke in more detail about the support she had received. [PRIVATE] about the situation and working through the feelings she had towards the Council. She felt this support had helped her manage and deal with the situation and she now takes time out to reflect rather than jumping into something. Ms Demarco said she knew support was out there now if she needed it but that she would not blur personal and professional life again. She would not want to repeat her behaviour or to cause distress to anyone.
47. Ms Demarco said that she could not rationalise why she accessed the records twice, she thought maybe it was curiosity at the time, but she repeated that she had no reason for doing so and she did not share the information from the records.

Social Work England submissions on Misconduct and Impairment

48. Ms Steels submitted that the conduct of Ms Demarco as admitted by her and found proved by the panel, does constitute misconduct. She submitted that Ms Demarco has failed to comply with core requirements of her role as a social worker, including the requirement to be open and honest, act ethically and transparently, and act appropriately in accessing data. These are fundamental tenets of the social work profession.
49. Ms Steels referenced the witness statement of Person M who states that Ms Demarco should have known she should not have accessed her own record, nor the files of SO, HO and KDC. Ms Steels asked the panel to have regard to the importance of confidentiality and data protection, and the fact that individuals who have been in the past or are presently open to social services have the right to expect their personal lives to remain just that (personal and private) and only accessed by those who need to for professional reasons. Ms Steels submitted that Ms Demarco's behaviour is exacerbated as it was not an isolated incident, but rather related to more than one file, on more than one date, and demonstrates a willingness to ignore training and ignore warning signs on the front page of Liquid Logic.
50. Ms Steels submitted that failing to give a true account of the access to the records is serious. She submitted that it demonstrates a willingness to provide a false account to an employer and the regulator, misleading them both. Ms Steels submitted that Ms Demarco was dishonest to the internal council investigation and remained dishonest in her account to her regulator. Therefore, demonstrating multiple instances of dishonesty, in multiple contexts in multiple professional settings. This occurred over a very protracted period and is aggravated as Ms Demarco not only lied herself but enlisted [PRIVATE] to lie for her to attempt to cover up her behaviour.
51. Ms Steels submitted that this demonstrates a deliberate, calculated dishonesty which was thought through and planned, rather than simply a spur of the moment panic. Ms Steels submitted that dishonesty is always serious given that social workers are routinely trusted with access to people's homes, these people are often vulnerable, and social workers can access highly sensitive and confidential information, often at the most vulnerable time of

service users lives. Ms Steels submitted that dishonesty represents a fundamental departure from the basic tenets of the social work profession.

52. Ms Steels submitted that Ms Demarco's fitness to practice is impaired. In summary Ms Steels submitted that:

- i) It would have been emotionally distressing and harmful for KDC, HO and SO to know that Ms Demarco had accessed their private records and information particularly with reference to the evidence in the bundle which notes that SO does not like to discuss **[PRIVATE]** as it is too upsetting for him, and his way to cope with the situation is to ignore it.
- ii) Ms Demarco's behaviour demonstrates a clear misuse of IT systems containing sensitive information, showing an abuse of power and abuse of trust given to social workers who are put in privileged, trusted positions with information relating to some of the most vulnerable people in our society.
- iii) Ms Demarco's conduct, as found proved by the Panel, clearly breaches the fundamental tenets of the social work profession given it demonstrates a lack of honesty and openness, and a lack of respect for and protection of individuals' private, sensitive information.
- iv) Ms Demarco has acted dishonestly in providing an untrue account of the accessing of SO HO and KDC's files over a considerable period.
- v) Ms Demarco went through the entirety of the internal Council investigation maintaining her false account, and at least part of the regulatory investigation still maintaining it. She sought to minimise or justify her conduct such as to deflect blame onto the Council. Whilst she may have experienced a difficult set of circumstances at the time, that ought not to have impacted on her decision making or ability to reflect on her conduct in the way it did and for the length of time that it did.
- vi) Ms Demarco has still not been full and frank about the accessing of the files. It is entirely unclear why she did this, and she has been unable to provide reasoning or explanation as to why she had accessed the files of SO, HO and KDC. She accepted that the difficult circumstances she has referred to were primarily resulting from what happened in October 2020 and her perception of the Council at that time. This was not linked to her conduct in June 2020, and as such there appears to be no explanation for that conduct.
- vii) The accessing of the files was not a one off it was a deliberate decision, ignoring policies and the sign in page which Ms Demarco accepted in evidence that she was aware of at the time. It occurred on two separate occasions and related to three service user files.

- viii) There is clear a risk of repetition as it is not known what would happen should similar circumstances arise in the future. Whilst Ms Demarco is unaware of or unable to express what the circumstances were which led to her conduct, it is impossible to know if she can or has put in place any strategies to prevent the behaviour recurring.
- ix) Given the decisions made by Ms Demarco were deliberate, made despite knowledge that she had as to the policies and training around confidentiality, data protection, only accessing files where there was a professional reason to, etc. it is not the case that the misconduct can be seen to be remediable by undertaking training in those areas. It was not a lack of training or misunderstanding which led Ms Demarco to access the files.
- x) Dishonesty is an attitudinal failing. Ms Demarco demonstrated dishonesty over a protracted period and across two professional investigations (employer and regulator), this demonstrates that this is not an isolated incident but appears to be a character trait of hers.
- xi) Ms Demarco's reflection as to the harm and distress caused to service users affected, and to the reputation of the council and the social work profession more widely is limited and has only recently developed since October 2022 having had sight of the statement of case.
- xii) Ms Demarco provided little specific evidence or detail as to the strategies she has in place to assist her should circumstances leading to the misconduct arise again. It is not clear how the strategies she mentioned would prevent the misconduct of accessing files of people in her personal life with no professional reason to do so.
- xiii) It was not the case that there was a lack of knowledge or understanding leading to Ms Demarco's actions therefore it is debateable how much the training will assist in remedying the conduct.
- xiv) Given the seriousness of the misconduct committed by Ms Demarco, including her dishonest actions, public confidence in the profession would be undermined if there were to be no finding of impairment. Social workers are routinely trusted with access to vulnerable people's homes, and highly sensitive and confidential information. As such, dishonest conduct is highly damaging to public trust in social workers. It is imperative that the public see the regulator treating such conduct seriously and making a finding of impairment where dishonesty arises.

Ms Demarco's submissions on Misconduct and Impairment.

53. Ms Demarco made oral submissions in relation to misconduct and impairment. The submissions largely reflected the oral evidence which she provided earlier in the hearing, and which is set out in some detail above. By way of summary Ms Demarco submitted that:

- i) She had become upset yesterday during her evidence as had underestimated the pressure of providing evidence and discussing her failings which she found difficult.
- ii) She has provided an up-to-date character reference from her current manager, which provides a level of insight into her current practice and her ability to meet the professional standards. The manager has been happy to re-employ Ms Demarco having previously worked with her, which she hoped would show the panel the type of social worker she is. She has also provided other examples of positive feedback received.
- iii) Since these allegations have been raised, she has worked for two and a half years and done some very valuable work with children and their families, and this would not have been possible if her practice continued to be impaired. She undertakes a significant amount of work with the Family Court, where honesty and reliability are incredibly important, and she has recently received positive feedback from the Family Court, including this morning from the Judge.
- iv) She values her social work position and appreciates the value of the title 'social worker'. She will always strive to uphold professional standards and would not deviate from these standards again. She fully understands the impact of her previous actions upon the persons involved the Council and the social work profession.
- v) She has gained insight, been able to reflect upon her decisions and actions and tried to take remedial actions including additional training, following professional standards, and ensuring her practice has been held in high regard. She has also accessed additional support to help her work through her own feelings which were a barrier to her being able to accept responsibility and reflect. This has been a journey for her, of self-reflection and her insight and ability to reflect has changed significantly since the initial concerns were raised.
- vi) She accepts she was dishonest but there was a shift in her ability to reflect and take responsibility and in June 2021 she gave a clear response to Social Work England that she admitted to the allegations. She has followed this up with a further email and then a full response in October 2022 which was the next opportunity she was given to respond in full.
- vii) She accepts that her practice at the time of the allegations was impaired and referenced the circumstances of her personal life at that time.
- viii) She is remorseful and regretful and sad about the actions she took. Her actions were not in any way the actions a social worker should take, and she is embarrassed and ashamed by the way she conducted herself at that time.

However, she does take responsibility, fully accepts the concerns raised and is insightful into the impact of her actions on services users and the public. She accepted that social workers hold and have access to confidential information for vulnerable service users and their right to confidentiality should be maintained.

- ix) She would not seek for her practice to fall below the expected standards or to cause any distress to others again. She is aware that her actions can impact negatively upon local authorities and have wider consequences in relation to data breaches.
- x) She has practised for two and a half years since the incidents occurred without concern or restriction. She has been able to implement her learning through this process and reflect this into her current practice.
- xi) She is not currently impaired, and the positive nature of her current practice does not indicate any impairment. She practises with honesty, integrity and by adhering to professional standards. The person she was when the concerns were raised, has engaged in support and further training, and is now much more insightful and accepting of responsibility.
- xii) She did not have a reason for accessing SO. HO and KDC's file. She just did it and she knows it was wrong. She is being open and honest in saying that she does not know why she did what she did and if she created a reason that would not be being honest.
- xiii) She values being a social worker and would not seek to place that in jeopardy again. She wants to continue to work with children and families to achieve positive outcomes such as the successful rehabilitation of a mother and baby which she has facilitated at court today.

Panel's findings on Misconduct

- 54. The panel heard and accepted legal advice from the Legal Adviser on the issue of misconduct. The panel at all times had in mind the overriding objective of Social Work England which includes its duty to protect the public, promote and maintain public confidence in social workers in England and to promote and maintain proper professional standards for social workers in England. The panel had regard to the 'Social Work England Impairment and Sanctions guidance' updated 19 December 2022.
- 55. The panel considered the Social Work England Standards published in July 2019 which are the threshold standards necessary for safe and effective practice for social workers. The standards set out what a social worker in England must know, understand and be able to do. The panel bore in mind that a departure from the standards alone does not necessarily constitute misconduct.

56. The panel considered that the behaviours of Ms Demarco in relation to facts: 1.1;1.2;1.3;2;3 and 4 do amount to serious professional misconduct.
57. The panel concluded that Ms Demarco's conduct and behaviour fell far below the standards expected of a registered social worker. The panel determined that Ms Demarco's conduct was in breach of the Social Work England Professional Standards 2019 in particular standards:

'2.1 Be open, honest, reliable, and fair.'

'2.2 Respect and maintain people's dignity and privacy.'

'2.6 You must treat information about people with sensitivity and handle confidential information in line with the law.'

58. Based on the findings, the misconduct falls into two interlinked areas: i) unauthorised access to social care records and ii) dishonesty when challenged about the unauthorised accessing of records.
59. In relation to the unauthorised access to social care records this includes attempting to access her own records (October 2020), successfully accessing SO and HO's records on 25 June 2020 and 30 June 2020 and successfully accessing KDC's records on 30 June 2020. The panel took into account that there was repeated access to multiple **[PRIVATE]** service users and that this was not a one-off isolated incident. By her own admission, Ms Demarco knew her actions were wrong, and it was deliberate behaviour. The panel relied on the evidence of Person M about the impact conduct of this nature can have on service users and the public. The panel considered that the accessing of records without professional reason is serious. It demonstrates a disregard for confidentiality and data protection. It has the potential to lead to a breakdown of trust with service users and risk them withholding relevant information due to the risk of a worker accessing it inappropriately.
60. In relation to her dishonesty when challenged about her access to SO, HO and KDC's file the panel considered this to be a serious departure from the standards expected. The panel took into account that it was an isolated incident of dishonesty in that it relates to one discrete situation. However, the panel found that the dishonesty was exacerbated as it continued throughout the Council's investigation and was maintained for a period of time during the Social Work England investigation. Her dishonesty in the fabrication of events was also aggravated by involving a third party **[PRIVATE]** who gave a false account of the situation.
61. Ms Demarco provided mitigation for why she behaved in this way, but the panel concluded that she had not provided any reasonable justification for deliberately breaching the standards. The panel considered that the facts found proved would be

seen as far below what is expected by fellow practitioners and concluded that individually and cumulatively, they amount to misconduct.

Panel's findings on impairment

62. The panel heard and accepted the advice of the legal adviser in relation to impairment. The panel took into account that it should have regard to both the personal and public components and keep in mind the wider public interest. The panel also took into account the cases of *CHRE v (1) NMC & (2) Grant [2011] EWHC 927 (Admin)*, *Cohen v GMC [2008] EWHC 581 [Admin]*, *Cheatle v GMC (2009) EWHC 645 (Admin)*, *Bolton v Law Society 1993* and *The General Medical Council v Armstrong [2021] EWHC 1658 (Admin)*. The panel also took into account the 'Social Work England Impairment and Sanctions guidance' updated 19 December 2022, which includes information on assessing impairment.
63. The panel considered Ms Demarco's current fitness to practise firstly from the personal perspective and then from the wider public perspective. The panel also had regard to whether the conduct in this case is easily remediable, whether it has been remedied and whether it was highly unlikely to be repeated.

In deciding impairment, the panel had regard to the factors identified by Dame Janet Smith in her 5th Shipman Report and cited in *CHRE v (1) NMC and (2) Grant*. The panel considered whether:

- a- The social worker has in the past and/or is liable in the future to place service users at unwarranted risk of harm.
 - b- The social worker has in the past brought and/or is liable in the future to bring the profession into disrepute.
 - c- The social worker has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.
 - d- The social worker has in the past acted dishonestly and/or is liable to act dishonestly in the future.
64. In relation to the first component the panel determined that Ms Demarco has in the past placed service users at unwarranted risk of harm. The panel considered that the findings on misconduct at paragraph 59 show that Ms Demarco has acted in a way that could put service users at risk of harm. Although there is no evidence before the panel that Ms Demarco's misconduct caused actual harm to service users, her conduct gives rise to the potential for harm. If a service user knew about the inappropriate access of their files it could lead to the breakdown of trust which in turn may lead to relevant information being withheld and this could hinder how well the service user was supported and the understanding of the risks.

65. In relation to the question of whether Ms Demarco has in the past brought the profession into disrepute, the panel determined she had. A significant aspect of public interest is upholding proper standards of behaviour so as not to bring the profession into disrepute. The unauthorised access of service user records negatively influences the working relationship between social workers and service users. Social workers are often told intimate details of service users lives and they trust that information will be kept safe. In accessing the records of SO, HO and KDC without professional authority and then providing a dishonest account of that access Ms Demarco did bring the profession into disrepute.
66. In finding that Ms Demarco did not conduct herself in such a way as to adhere to the Social Work England professional standards, the panel determined that she had breached fundamental tenets of the social work profession. The panel considered that honesty and integrity are fundamental tenets of social work.
67. In relation to the fourth component, the panel determined that Ms Demarco had in the past acted dishonestly and had done so both to the Council and to Social Work England and had involved **[PRIVATE]** in the dishonest accounts she provided.
68. The panel considered the extent to which the misconduct in this case can be and has been remediated by Ms Demarco and whether it is likely to be repeated.
69. The panel took into account the oral evidence of Ms Demarco which was supported by a written reflection, training certificates and character references.
70. The panel considered that whilst the facts found against Ms Demarco included dishonesty, this was related to an isolated set of circumstances and there was no question of financial or other gain for Ms Demarco. At the time of the dishonesty, Ms Demarco was under stress **[PRIVATE]**. The panel recognised that Ms Demarco's dishonest actions when challenged about accessing the files were a shame reaction, and on balance, the dishonesty about her actions spiralled, as at that time she was responding in an emotional and defensive manner. The panel concluded that the conduct was an uncharacteristic lapse specific to the circumstances at that time rather than attitudinal in nature, and that it did not result in any direct harm to the public. The panel therefore determined that the conduct is remediable.
71. The panel placed significant weight on the written reflection provided by Ms Demarco supplemented by her oral evidence and submissions. The panel considered that she has developed insight, that she is remorseful and aware of her lapses of judgement in 2020. She acknowledges that in hindsight she *'felt unable to accept, at the time, my own wrong doings and my decision making was overshadowed by my own feelings towards the LA of anger and upset.'* She now accepts that *'this thought process was not rational*

nor was it what should be expected of a social worker' and she has taken responsibility for her actions.

72. The panel placed significant weight on the fact that Ms Demarco has been practising as a social worker for approximately eight years during which time she has not been subject to any adverse findings previously. Since the time of the events (October 2020), Ms Demarco has remained in front line child protection practice across several local authorities and no further concerns have been raised about the willingness or capacity of Ms Demarco to observe her professional duties. Ms Demarco has admitted the facts, albeit not at the outset, and has engaged with Social Work England throughout the regulatory process which has been ongoing for over two years.
73. Ms Demarco told the panel the steps she has taken to remedy what happened and the journey she has been on since the events of 2020. Ms Demarco has refreshed her memory of the Social Work England professional standards by attending a training course and has attended training on probity/ethics, evidence of which was provided to the panel. Ms Demarco has completed various training on data protection and the importance of keeping information safe. Whilst the panel recognise that a lack of training was not the reason for Ms Demarco's misconduct, the panel found that her efforts in seeking to reflect on the professional standards and data protection issues, maintaining her understanding of those issues and keeping her knowledge up to date were to be positively acknowledged.
74. The panel took into account that since the events of October 2020, Ms Demarco has accessed **[PRIVATE]** and has accepted that she was impaired at the time of the events. The panel determined that Ms Demarco has developed strategies that will assist her in times of stress and that her positive practice over the past two and a half years demonstrates that she has been able to manage her personal circumstances without these impacting on her work.
75. Ms Demarco provided evidence of several testimonials/references from recent employment and other professionals she works alongside, which support her assertion that she is practising safely and is held in high regard in the work environment. The panel considered significant and placed weight on a character reference provided by Ms Demarco's current Practice Manager dated 25 April 2023. The referee states that she line managed Ms Demarco from February 2021 to January 2022. The referee then moved jobs and requested that Ms Demarco join her current team which Ms Demarco did in March 2023. The referee describes Ms Demarco as *'a diligent social worker who gleans respect and trust from the children and families she supports as well as from her colleagues'*. The referee states that during her time managing Ms Demarco she has *'never questioned her professionalism, integrity and honesty'* and that she is *'a true asset to my team and I would not hesitate to re employ her in alternative positions or recommend her for other positions.'* The panel considered that this reference supported

Ms Demarco's evidence that the actions she took in relation to events in 2020 was isolated and out of character and that the conduct would not be repeated.

76. In all the circumstances the panel decided that the risk of repetition and of placing the public at risk of harm is minimal. Therefore, the panel did not find personal impairment.
77. The panel next considered whether a finding of current impairment was necessary in the public interest. The panel was mindful that the public interest encompassed not only public protection but also the declaring and upholding of proper standards of conduct and behaviour as well as the maintenance of public confidence in the profession. It took into account the guidance in *Grant* at paragraph 74:- *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*
78. The panel considered its findings in relation to misconduct, which demonstrated an abuse of professionalism by Ms Demarco's inappropriately accessing confidential records of three service users', access to two of those records took place on more than one occasion and the situation was then compounded by dishonesty in relation to the access to the records. The panel accepted Ms Demarco's evidence that the misconduct did not represent an attitudinal issue and that Ms Demarco has shown insight and remediation such that she is not personally impaired. However, the panel had regard to the impact Ms Demarco's conduct could have had on the public as per Person M's evidence. The panel took into account that social workers hold privileged positions of trust. Their role often requires them to engage with vulnerable people. It is essential to the effective delivery of social work that the public can trust social workers. Abuse of trust by a social worker is a serious and unacceptable risk in terms of confidence in the profession.
79. The panel considered that members of the public, even if they knew the full facts of Ms Demarco's current insight, mitigation and remediation, would be concerned if the Regulator were not to mark the seriousness of Ms Demarco's misconduct with a finding of current impairment on public interest grounds. It considered that not to make a finding of current impairment of fitness to practise in relation to those matters would undermine public trust and confidence in the profession and would fail to uphold and declare proper standards.
80. The panel therefore decided on the public interest element of impairment that, to maintain public confidence in the profession and in the Regulator, and to uphold proper professional standards, Ms Demarco's fitness to practise is currently impaired.

Decision and reasons on sanction:

Social Work England submissions

81. The panel heard submissions from Ms Steels on behalf of Social Work England. Ms Steels drew the panel's attention to the Social Work England guidance on sanctions.
82. Ms Steels submitted that only a suspension order would be appropriate and proportionate to address the concerns raised in this case. Ms Steels drew the panel's attention to its findings that Ms Demarco's misconduct was serious; related to multiple **[PRIVATE]** services users; had involved dishonesty which was maintained during the Council investigation and for part of the Social Work England investigation; and had involved **[PRIVATE]** giving a false account of events.
83. Ms Steels submitted that a suspension order would mark the disapproval of Ms Demarco's actions and that the public would expect this sanction given the dishonesty. It would show that the Regulator had acted strongly and decisively in a case where confidence of service users had been violated and where dishonesty was involved.
84. Ms Steels submitted that due to the nature of the misconduct in this case, conditions of practice would not be appropriate or workable.
85. Ms Steels acknowledged that the panel might not be in agreement with Social Work England's submissions. She said that if the panel do not agree to impose a suspension order, it should impose a warning order for three or five years.

Ms Demarco's submissions

86. Ms Demarco reminded the panel that she had been practising for two and a half years with no restrictions on her practice and no further concerns had arisen. She said she is currently working in a commissioned service which means that her practice is automatically under greater scrutiny due to how the service model works. She said that her current managers are aware she is subject to this fitness to practise process.
87. Ms Demarco submitted that she has shown she can engage and work with Social Work England; she has admitted her wrong doings; she has sought to remedy her behaviour; she has gained insight; and she has expressed remorse and regret for her actions.
88. Ms Demarco told the panel that she is working in a child protection team involving court work and complex cases. She is currently part way through undertaking parenting assessments and doing direct work with children. If she was suspended today, then she would not be able to conclude her work. This would impact negatively on the families and children who would have to retell their life stories.

89. Ms Demarco said that she is committed to her social work role and that she plays an important and invaluable role in her work with children. By way of example, she has recently ensured a six-year-old child had a birthday gift to open on their birthday; ensured two teenage girls had dresses to wear to their school proms; and facilitated a rehabilitation plan for a baby and mother. Ms Demarco said that her colleagues call her the “*Mary Poppins*” of social work.
90. Ms Demarco told the panel that she was willing to work with conditions of practice if the panel deemed them suitable. She accepted that a warning might be appropriate as her practise had fallen below the standards expected and this would show the public the disapproval of her actions. Ms Demarco said that a suspension order would result in deskilling her and would impact on the families that she works with.

Legal advice

91. The panel heard the legal advice on all the available options on sanction as set out in the Regulations. The panel was advised to consider the ‘Social Work England Impairment and Sanctions guidance’ (“Sanctions guidance”) dated 19 December 2022. The panel was advised that the purpose of any fitness to practise sanction is to protect the public which includes maintaining confidence in the profession and upholding professional standards. The sanction imposed should be the minimum necessary to protect the public.
92. The panel was advised that whilst findings of dishonesty will often result in erasure or suspension, it is important to note that there are authorities which suggest that dishonesty does not inevitably result in a finding of current impairment (*PSA v General Medical Council & Uppal* [2015] EWHC 1304) and that a more nuanced approach should be taken to dishonesty and that not all cases of proven dishonesty will lead to suspension or erasure.

Panel’s decision

93. The panel applied the principle of proportionality by weighing Ms Demarco’s interests with the public interest and by considering each available sanction in ascending order of severity. The panel considered the mitigating and aggravating factors in determining what sanction, if any, to impose.
94. The panel identified the following mitigating factors:
- (i) Ms Demarco has shown insight and genuine remorse.
 - (ii) Ms Demarco had no previous concerns raised about her practice before the events to which these proceedings relate. She has worked in front line child protection practise for two and a half years since the events and has provided evidence of very positive feedback highlighting her good work.

95. The panel identified the following aggravating factors:
- (i) The dishonesty continued throughout the Council's investigation and was maintained for a period of time during the Social Work England investigation.
 - (ii) Ms Demarco's dishonesty in the fabrication of events involved a third party **[PRIVATE]**.
96. The panel first gave very careful consideration as to whether it would be appropriate to conclude the case with no action and had regard to paragraph 95 of the Sanctions guidance. Given its findings in relation to misconduct and public impairment, the panel determined that to conclude the case with no action would send out the wrong message to the public, the profession, and Ms Demarco about what is an acceptable standard of conduct. It would not achieve the aims of Social Work England's primary objective to protect the public and specifically to:
- a. Protect, promote, and maintain people's health and wellbeing.
 - b. Promote and maintain public confidence in social workers in England.
 - c. Promote and maintain proper professional standards for these social workers.
97. The panel next considered whether it would be appropriate to conclude the case with advice or a warning order having regard to paragraphs 99 – 112 of the Sanctions guidance.
98. There are no steps that Ms Demarco should take to avoid repeating the conduct that contributed to the concern other than what is routinely expected of a registered social worker in accordance with the professional standards. The panel therefore concluded that advice was not appropriate.
99. The panel noted that a warning order, whilst not a restrictive sanction, is a serious outcome for a social worker. It is clearly intended that warning orders should be used in cases where:
- (i) It is necessary to send a signal that any repetition of the behaviour that led to the concerns is highly likely to result in a more severe sanction.
 - (ii) It is necessary for a clear expression of disapproval of the social worker's conduct.
100. The panel concluded that a warning order against Ms Demarco's registration would maintain public confidence in the profession, send a message about the professional standards expected of social workers, and act as a deterrent to both Ms Demarco and other social workers.

101. In order to satisfy itself of the appropriateness and proportionality of a warning order, the panel tested it against the more restrictive sanctions. The panel took into account that the primary purpose of a conditions of practice order is to protect the public while the social worker takes any necessary steps to remediate their fitness to practise. The panel could not formulate any workable or appropriate conditions in this case as it relates to behavioural failings rather than competency deficiencies.
102. The panel recognised that if it did not impose a warning then due to conditions of practice not being an appropriate option, it would have to move on to consider a suspension order.
103. The panel determined that a suspension order would be unduly punitive in the particular circumstances of this case where the primary objective of protection of the public could be achieved by a less restrictive sanction. In relation to public interest the panel took into account that there is a public interest in retaining remediated social workers in unrestricted practice when a lesser sanction fully upholds the public interest. The panel concluded that a suspension order would therefore be disproportionate.
104. The panel considered that the concerns in this case were limited, in that Ms Demarco's conduct was an uncharacteristic lapse specific to the circumstances at that time rather than attitudinal in nature, and that it did not result in any direct harm to the public. Ms Demarco's misconduct has been remediated, she has shown insight, and there is low risk of repetition, such that the panel had found no personal impairment.
105. The panel took into account that a warning order would mark the dishonesty in this case and would signify regulatory disapproval with regard to Ms Demarco's past conduct. The panel took into account that Ms Demarco has been working as a social worker for two and a half years since the events and has provided multiple positive references and feedback. The panel took into account that a warning order would allow her to continue in unrestricted practice and continue to make a positive contribution to the children and families who she supports.
106. The panel considered how long the warning should stay on Ms Demarco's entry on the public extract of the register, noting that this can be one, three or five years.
107. The panel first considered whether a one year warning is appropriate and had regard to paragraph's 109-112 of the Sanctions guidance. Taking account of the aggravating features of Ms Demarco's case, the panel found that whilst the events relate to a specific set of circumstances, her actions in maintaining the dishonesty to the Council and for a short time to Social Work England, could not on balance, be described as an isolated incident of relatively low seriousness. The panel therefore concluded that a one year warning would not be sufficient.

108. The panel determined that given the serious nature of the misconduct it had found, a three year warning would be appropriate and proportionate to maintain public confidence and highlight the professional standards expected.
109. In light of Ms Demarco's positive practice over the last two and a half years, the panel considered that a five year warning would be overly onerous and was not necessary to protect the public or in the public interest.
110. In reaching the conclusion on sanction, the panel balanced the public interest against Ms Demarco's interests. The panel took into account the consequential personal and professional impact that each order may have upon Ms Demarco and weighed those against the panel's duty to give priority to public protection and the wider public interest.
111. That concludes this determination.

Right of appeal:

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:

a. 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.

b. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.

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.

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.

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:

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.

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:

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>.