

Social worker: Debra Milburn

Registration number: SW77852

Fitness to Practise

Final Hearing

Dates of hearing: 12 September 2023 to 19 September 2023

Hearing venue: Remote hearing

Hearing Outcome: Fitness to practise impaired, suspension order (36 months)

Interim order: Interim suspension order (18 months)

Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) (“the Regulations”).
2. Ms Debra Milburn did not attend and was not represented.
3. Social Work England was represented by Mr Jordan Santos, barrister instructed by Capsticks LLP.

Adjudicators	Role
Frank Appleyard	Chair
Charlotte Scott	Social worker adjudicator
Melissa Forbes-Murison	Lay adjudicator

Tom Stoker	Hearings officer
Andrew Brown	Hearings support officer
Natalie Amey-Smith	Legal adviser

4. The identification of the witnesses in this case are as follows:
 - Person A, daughter of Ms Debra Milburn.
 - Melanie Farnell, Senior Practitioner, Agency Social Worker, Durham Young People’s Service (at the time of the Allegation).
 - HR, ex-partner of Person A, who was in a relationship with Person A at the time of the Allegation.
 - MT, former neighbour of Ms Debra Milburn.
 - Raeesa Haq, paralegal at Capsticks – who provides a production statement exhibiting the ambulance logs.

Service of notice:

5. Ms Milburn did not attend and was not represented. The panel was informed by Mr Santos that notice of this hearing was sent to Ms Milburn by email to the electronic mail address provided by Ms Milburn. Mr Santos referenced the relevant Social Work England (Fitness to Practise) Rules 2019 (as amended) (“the Rules”). Mr Santos submitted that the notice of this hearing had been duly served.
6. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of the final hearing dated 10 August 2023 and addressed to Ms Milburn at her electronic mail address which she provided to Social Work England.
 - An extract from the Social Work England Register as of 10 August 2023 detailing Ms Milburn’s registered address.

- A copy of a signed statement of service, on behalf of Social Work England, confirming that on 10 August 2023, the writer sent by next day electronic mail to Ms Milburn at the address referred to above the Notice of Final Hearing letter and enclosures.

7. The panel heard and accepted the advice of the legal adviser in relation to service of notice.
8. Having had regard to the Rules and all 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 Milburn in accordance with Rules 14, 15, 44 and 45.

Proceeding in the absence of Ms Milburn:

9. The panel heard the submissions of Mr Santos on behalf of Social Work England. Mr Santos submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Ms Milburn and as such there was no guarantee that adjourning today's proceedings would secure her attendance. Mr Santos informed the panel that a Case Management Meeting ("CMM") had taken place on 25 August 2023. One of the directions made at the CMM was for Ms Milburn to confirm by 01 September 2023 whether she would be attending the final hearing and whether she wished to cross examine Person A. On 01 September 2023, at 09:43, Capsticks LLP emailed Ms Milburn to remind her that a response to the CMM directions was due. At 11:30 on 01 September 2023, Ms Milburn responded to the email and stated that *'I will not be attending the hearing and do not wish to attend.'*
10. Mr Santos said that a further email had been received from Ms Milburn on 04 September 2023, a copy of which had been included in the bundle, which stated *'I will not be attending the hearing. I will not be represented. I do not wish to ask/cross examine via third party my daughter.'* Mr Santos submitted that Ms Milburn's position was unequivocal that she would not be attending. He submitted that she had voluntarily absented herself and that whilst her absence would result in some prejudice this was mitigated by the fact that she had engaged to the extent she has provided written submissions and supporting documents for the panel to take into account during its consideration of the evidence and decision making. Mr Santos invited the panel to proceed in the interests of justice and the expeditious disposal of the hearing.
11. The panel heard and 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 Hayward [2001] EWCA Crim. 168*, *General Medical Council v Adeogba [2016] EWCA Civ 162* and the factors endorsed in *Sanusi v GMC [2019] EWCA Civ 1172*. The panel's attention was drawn to the *'Service of notices and proceeding in the absence of the social worker'* guidance dated 16 December 2022 which is available on the Social Work England website.
12. The panel considered all the information before it, together with the submissions made by Mr Santos on behalf of Social Work England. The panel noted that Ms Milburn had been sent notice of the hearing and the panel was satisfied that she was aware of the hearing.

The panel took into account that Ms Milburn has been consistent in stating on several occasions, as set out above, that she has no intention of attending at the final hearing. Ms Milburn has provided various written submissions which contain her views on the regulatory concerns and the panel can take these into account. The panel considered that there is a responsibility on social workers to engage with Social Work England in relation to the investigation and resolution of allegations against them. The panel took into account that Social Work England has four witnesses on notice to give evidence at this hearing including Person A, [PRIVATE].

13. The panel concluded that Ms Milburn had chosen voluntarily to absent herself from these proceedings and had made her feelings clear in her emails. The panel had no reason to believe that an adjournment would result in Ms Milburn's attendance nor that it would secure her future engagement. Having weighed the interests of Ms Milburn, with those of Social Work England, and the public interest in an expeditious disposal of the hearing, the panel determined that it is in the interests of justice to proceed in Ms Milburn's absence.

Preliminary matters:

14. Mr Santos indicated that he had a number of preliminary applications for the panel to address. The Panel agreed that it would deal with each preliminary issue in turn.

Admissibility application by Ms Milburn

15. Mr Santos explained that Social Work England had received a written document from Ms Milburn on 04 September 2023. That document contained a link to a website article which Ms Milburn wanted the panel to see, indicating that the article showed Person A's character. Mr Santos said that the panel has been provided with the statement of 04 September 2023, but with the link to the article redacted, due to Social Work England's view that it is prejudicial. As an alternative, Social Work England has provided a two-page summary, setting out in neutral terms, the essence of the information contained within the website article.
16. Mr Santos informed the panel that Ms Milburn had been advised by Social Work England that the website article would not be provided to the panel. In response, Ms Milburn had responded to say that she objected to the redactions to her statement and that in her view the information is relevant as to the credibility of Person A's evidence. Mr Santos said that Ms Milburn had expressed concern about Person A seeing the website article, suggesting that it should only be shown to the panel and not Person A.
17. Mr Santos submitted that the website article should not be placed before the panel as part of the evidence. He submitted that the website article is hearsay, it is a blog which is over three years old, which has been found on google, and which appears to have been created by an unnamed victim of an online scam. The unnamed blogger reports to have been scammed, for money, by two individuals, in relation to an online 'seeking arrangements' website, which appears to be akin to a 'sugar daddy' arrangement. The blogger includes names and photographs of the individuals and some other information. Ms Milburn's

written document submits that one of the individuals purported to have scammed the unnamed blogger, is Person A. Ms Milburn states that she knows this to be the case due to the blogger providing details of the individual's bank account number and phone number, which Ms Milburn says match those of Person A.

18. Mr Santos submitted that the website article should not be admitted, it should be treated with caution, as it is an irrelevant attempt to smear the character of Person A. Mr Santos drew the panel's attention to the case of *R. (on the application of H) v Nursing and Midwifery Council, 2013 WL 6980549 (2013)*. He submitted that the panel should consider whether this information is relevant in considering whether it is admissible. He submitted that this information does not relate to evidence about dishonesty or criminal cautions, and does not go to an issue which this panel needs to consider.
19. Mr Santos submitted that the panel should also have regard to the provenance of the website article, as it is an open-source blog, it could have been edited by anyone over the three years since it was posted, and the author is unknown. Mr Santos said that if the evidence were to be relied upon, Social Work England would want to cross-examine the author, and would want Person A to be able to respond to it. Mr Santos submitted that given the nature and context of the information, it could be spurious, and it does not go to issues of credibility in relation to Person A.
20. Mr Santos told the panel that Social Work England has checked the website article, and the age of the named individual does not match that of Person A, and nor does the telephone number.
21. Mr Santos submitted that the website article is irrelevant, it would not be right and proper for a panel to admit it and it would not take the panel any further in its task of determining the specifics of the allegation before it.
22. The panel heard and accepted the advice of the legal adviser in relation to factors it should take into account in reaching its decision, with an overriding consideration being ensuring that the proceedings are fair. In relation to hearsay, the legal adviser referred to factors which arise from the cases of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* and *R (Bonhoeffer) v General Medical Council [2011] EWHC 1585 (Admin)*. The panel were also referred to Rule 32 b (7) of the Rules which states that the adjudicators may admit evidence where they consider it fair to do so, whether or not such evidence would be admissible before the courts. The legal adviser also referred the panel to the Social Work England 'Pre-hearing case management' guidance dated 16 December 2022, and the case of *R. (on the application of H) v Nursing and Midwifery Council, 2013 WL 6980549 (2013)* (paragraphs 20 – 26).
23. The panel took into account that this website article had been provided late in the day by Ms Milburn, in breach of the CMM directions, despite her having sufficient time and opportunity to provide any evidence on which she sought to rely at an earlier stage. The panel determined that the website article does amount to hearsay evidence, and whilst hearsay evidence is admissible in accordance with the Rules, it should only be admitted if it is fair to do so.

24. The panel determined that it was not fair or just to admit the hearsay evidence. The panel considered the evidence to be of inferior quality, as it comes from a non-verifiable anonymous source, and is therefore incapable of being challenged by cross-examination. Ms Milburn accepts in her written submissions that the '*individual google blog is not a witness.*' The panel had no credible source before it, setting out details of why and how the information was recorded. The panel considered that given the nature and context of the content, it is highly plausible that the website article is spurious.
25. Whilst Ms Milburn submits the evidence is relevant as to credibility, the panel did not agree. The panel found, based on the summary it had received and the submissions from Mr Santos, that the evidence has no relevance to the issues it must decide and has no probative value. If the evidence were to be admitted, the contents would need to be shared with Person A to allow her the opportunity to respond. However, Ms Milburn has indicated that she does not want the information shared with Person A, therefore undermining her own application.
26. The panel accepted that it is open to Ms Milburn to challenge Person A's credibility. The panel concluded that, even without admitting the website article, Ms Milburn could seek to undermine Person A's credibility by subjecting her to cross-examination, on the contents of her witness statement. Ms Milburn has been afforded an opportunity to cross-examine Person A but has declined.
27. For the above reasons, the panel dismissed Ms Milburn's application for admission of the website article.

Admissibility application by Social Work England

28. Mr Santos referred to the CMM which took place on 25 August 2023. Mr Santos explained that the CMM panel was asked to consider whether three documents could be admitted as hearsay for the final hearing. Those documents being:
- Child and Family Assessment completed by Melanie Farnell.
 - Strategy Discussion minutes.
 - The Ambulance call logs.
29. Mr Santos told the panel that the decision at the CMM was to allow the admission of the '*Ambulance call logs*' but to dismiss the inclusion of the other documents as hearsay. Mr Santos submitted that whilst Social Work England accepted that third party information from professionals, other than Melanie Farnell, amounted to hearsay and should be redacted from the two documents, it did not accept that the documents should not be admitted.
30. Mr Santos referred the panel to Rule 29 of the Rules, which states that '*Case management directions are binding on the parties and on any fitness to practise panel subsequently considering the case unless the panel considers that:*
- (a) there has been a material change of circumstances; or*

(b) it is not in the interests of justice for that to be the case.'

31. Mr Santos submitted that it was not in the interests of justice to exclude the Child and Family Assessment and the Strategy Minutes, from the exhibit bundle, in so far as they relate to the direct information from Melanie Farnell. He submitted that the documents both contain factual and probative information which Melanie Farnell will give live evidence on. He submitted that the documents have been redacted to remove fact or opinion evidence provided by third parties, and therefore the introduction of the evidence would not be prejudicial to Ms Milburn.
32. The legal adviser reminded the panel that it must conduct the hearing in the manner it considers fair and can admit evidence where it considers it fair to do so.
33. The panel agreed with the submissions of Mr Santos that Social Work England should be permitted to introduce the Child and Family Assessment and Strategy Discussion minutes as evidence. Whilst the introduction of the evidence would be contrary to the CMM decision, the panel concluded that, as permitted by Rule 29, it would be in the interests of justice to allow it. The panel took into account that the documents are contemporaneous and were produced in the course of business. They contain information directly recorded by Melanie Farnell as part of her role as Person A's social worker. Melanie Farnell is giving live evidence and can speak directly to both documents and can be cross-examined on the same, should Ms Milburn choose to. The panel considered that the admission of the redacted documents would cause no prejudice to Ms Milburn, to the contrary, they provide best evidence as the documents were created at the time of the events to which the Allegation relates. The documents were not written for the purposes of regulatory proceedings but produced as a statutory requirement following Person A's referral to Durham County Council's Young People's Service.

Amendment to the Allegation

34. Mr Santos sought to amend the Allegation, requesting that the words which contained strikethrough be deleted.

'1. The allegations arising out of the regulatory concerns referred by the Case Examiners on 14 April 2022 are:

Whilst registered as a social worker between April 2019 and November 2020, ~~you behaved in a way that would bring into question your suitability to work as a social worker in that:~~

~~1. You failed to provide an appropriate level of care to Person A in that:~~

1.1 Between October 2019 and March 2020, you did not ensure that Person A was properly supported following an allegation that Person A [PRIVATE]

1.2 On 13 September 2020 you did not ensure that Person A was safeguarded from Person B.

2: Between 17 September 2020 and 16 November 2020 you failed in your duty as a social worker to engage with social services after Person A was made the subject of a Child In Need Assessment.

The matters in allegations 1 & 2 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your misconduct.'

35. Mr Santos submitted that the proposed amendments do not change the nature of the Allegation, nor do they broaden or elevate it in severity.
36. The panel heard and accepted the advice of the legal adviser. She reminded the panel that it must consider whether such amendments would cause injustice to Ms Milburn or undermine her right to a fair hearing. The legal adviser informed the panel of the requirement to consider whether the proposed amendments heighten the seriousness of the Allegation or represent a material change in some other respect. If the proposed amendments do not, that would be a strong indicator that the amendments would not cause any injustice. The legal adviser drew the panel's attention to the case of the *Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319*, in which it was held that a professional disciplinary committee is entitled to make amendments to the allegations before it, to avoid undercharging.
37. In its deliberations, the panel had regard to Ms Milburn's written submission provided to Social Work England on 08 September 2023. This states, *'It is also noted that a request will be proposed from SWE to remove wording from Allegation 1. I wish for this to remain unaltered and to be recorded as unnecessary and not relevant to the fact and no evidence was provided to substantiate the allegation.'*
38. The panel took into account that the proposed amendments to the Allegation are minor, they do not materially change the Allegation and Ms Milburn has been given notice of the proposed amendments. The panel concluded that the Amendment would not create unfairness for Ms Milburn and agreed to the application. The amended Allegation is set out in full below.

Ms Milburn's application for unredacted documents to be provided

39. In Ms Milburn's written submissions (08 September 2023) she states:
'Social Work England have redacted information from my Statement on 24th August 2023. I have not agreed to this. They are not independent and seem to be cherry picking what information is suitable without consultation until after the fact. SWE are now proposing to redact the information from my statement on the 4th September 2023. I oppose all redactions on the basis the information provided it is relevant to my case, the fact the allegations by my daughter are malicious and this was part of her character at the time. They aim to redact complaints about SWE in how they have handled the case which clearly identifies gross misconduct and a lack of insight leading to the hearing must also play a part in the understanding of the allegations, for example lack of trained SWE investigators not knowing the difference between child in need and child protection and how a child in need arrangement is voluntary and not compulsory which is one of the allegations I am accused of.'

40. The panel asked Mr Santos to provide his submissions in response to Ms Milburn's application for the panel to have an unredacted 'Social Workers bundle.'
41. Mr Santos submitted that, save for the website article redaction, the only redactions made by Social Work England, were to ensure the removal of information which could be prejudicial to Ms Milburn.
42. The panel took into account the Social Work England 'Pre-hearing case management' guidance dated 16 December 2022. It noted that, *'the parties should aim to agree the contents of the hearing bundle in advance of the hearing. They should consult with each other about any redactions that they need Social Work England's external legal provider to make to the evidence bundle. Redactions are content that needs to be removed to ensure fairness of the proceedings.'* Further, that *'the burden is on both parties to make sure the content of the bundle does not include prejudicial material. This means material that may unduly influence adjudicators to reach a decision at the final hearing on an improper basis.'*
43. In reaching its decision the panel recognised that Ms Milburn is not present and is not represented. Whilst Social Work England may have acted in fairness by removing content from Ms Milburn's written submissions, she expresses the clear view that she does not agree with the redactions and wants the panel to have everything. The panel concluded that given Ms Milburn's absence coupled with her strong assertion that everything should be given to the panel, it would grant her application. However, this did not include the requirement to un-redact the information relating to the website article, which had formed the subject of an earlier preliminary decision, and on which the panel had found it unfair to admit. The panel kept in mind that as an experienced professional Tribunal, it could be trusted to make a proper assessment of any information contained in Ms Milburn's submissions and not attach weight to irrelevant information or inappropriate weight to incomplete information.
44. The panel requested that the hearing be stood down for a short period of time pending Social Work England providing the unredacted documents.

Private hearing in part

45. Mr Santos submitted that part of the hearing should be held in private. Firstly, any matters relating to Ms Milburn's health should be held in private session in accordance with Rule 38 a (ii). Secondly, matters relating to Person A's health or relating to the [PRIVATE] should be heard in private, so as to protect Person A's welfare.
46. The panel heard and accepted the advice of the legal adviser and had regard to Rule 38 of the Rules.
47. The panel acknowledged 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 the hearing is to conduct a fully comprehensive inquiry into the concerns raised about the fitness to practise of Ms Milburn. Anything that could inhibit the panel from conducting such an inquiry is a risk to the public interest.

48. The panel agreed with Mr Santos that matters relating to Ms Milburn's health should be held in private session in accordance with Rule 38. The panel concluded that in this case it was appropriate to consider some other aspects of the evidence in private, that being the evidence in respect of Person A's health and the information about the alleged [PRIVATE]. In reaching this decision the panel had regard to Person A's vulnerabilities, welfare and right to a private life. The panel was concerned that the particulars of the Allegation are linked and therefore a careful approach would need to be taken to ensure that there was no evidence heard in public which should be heard in private. The panel acknowledged that the approach of hearing some evidence in private and some in public might prove cumbersome and be contrary to the smooth and efficient running of the hearing. Therefore, the panel decided that it would re-visit this decision if necessary, during the course of the hearing.

Allegations:

'1. The allegations arising out of the regulatory concerns referred by the Case Examiners on 14 April 2022 are:

Whilst registered as a social worker between April 2019 and November 2020,

1.1 Between October 2019 and March 2020, you did not ensure that Person A was properly supported following an allegation that Person A had been [PRIVATE];

1.2 On 13 September 2020 you did not ensure that Person A was safeguarded from Person B.

2: Between 17 September 2020 and 16 November 2020 you failed in your duty as a social worker to engage with social services after Person A was made the subject of a Child In Need Assessment.

The matters in allegations 1 & 2 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your misconduct.'

Admissions:

49. Rule 32c(i)(aa) Fitness to Practise Rules 2019 (as amended) states:

'Where facts have been admitted by the social worker, the adjudicators or regulator shall find those facts proved.'

50. The panel noted that Ms Milburn denied the Allegation in full.

51. In line with Rule 32c(i)(a) of the Rules, the panel went on to determine the disputed facts.

Background:

52. On 30 September 2020, Social Work England received a referral regarding Ms Debra Milburn.
53. At the time of the Allegation, Ms Milburn was employed as an Independent Reviewing Officer for Durham County Council via Caritas Recruitment. The Allegation relates to Ms Milburn's daughter, Person A and concerns which arise from the relationship between them. The Allegation dates from October 2019 to November 2020, during which time Person A was a child, she has since turned eighteen.
54. On 13 September 2020, whilst at home, Person A [PRIVATE]. An ambulance was called by HR and subsequently by HR's mother (Person D). There followed what could be described as an emotionally charged situation during which Ms Milburn, her partner (Person B), HR and his mother (Person D) were all present with Person A in the family home. The situation involved an alleged physical assault on Person A, by Person B, as Person A tried to leave the family home. Various parts of the events were observed by MT, a neighbour.
55. Ultimately, Person A was taken to the Sunderland General Hospital where she spent the night and was placed under observation. Whilst in hospital, Person A, HR, and Person D, made several allegations about Ms Milburn and her then partner (Person B), which caused concern. Person A indicated to the hospital that she required accommodation as she did not want to return home to Ms Milburn's care. As a result, the Emergency Duty Team made a referral to social services.
56. A Child & Family Assessment started on 14 September 2020. This assessment was conducted by Melanie Farnell, Senior Practitioner, for Durham County Council Young People's Services. A multi-professional Strategy Discussion Meeting was held by Durham County Council Young People's Services in relation to Person A on 17 September 2020. The outcome of the Strategy Discussion meeting was that the threshold for s47 Children Act 1989 was not met. At the meeting it was confirmed that the Local Authority Designated Officer ("LADO") had already been informed about the case. At the meeting it was confirmed that Person A should be supported as a Child in Need (in accordance with s17 Children Act 1989). The Child & Family Assessment concluded on 16 November 2020, with a decision to continue to provide services to Person A in accordance with s17.
57. Following the incident on 13 September 2020, Person A never returned home to Ms Milburn's care.

Summary of Evidence:

Social Work England

58. Social Work England relied upon the witnesses as set out in paragraph four of this decision. Mr Santos called Person A, Melanie Farnell, HR, and MT to give evidence. He did not call Raeesa Haq as her statement is a production statement only.
59. The four witnesses gave evidence either under affirmation or oath and adopted the contents of their witness statements. Melanie Farnell informed the panel that she had left social work for a brief period of time to set up her own business but she re-registered with Social Work England in April 2023, so that she can undertake part-time work as a social worker alongside running her business.
60. As Ms Milburn was not present, the witnesses were not cross examined but the panel was mindful that in the absence of Ms Milburn it should play an inquisitorial role and explore any apparent weaknesses there might be in Social Work England's case. The panel therefore asked questions of clarification to all four witnesses.

Ms Milburn

61. Ms Milburn did not attend to give oral evidence. The panel were provided in advance of the hearing with a number of written submissions from Ms Milburn in response to the Allegation. Ms Milburn has also provided numerous character references, a letter from Harbour Domestic Abuse Services, and copies of text messages between herself and Melanie Farnell.
62. Ms Milburn denies the Allegation in its entirety.
63. In summary Ms Milburn states:
- Person A had numerous behavioural issues at school, which the school were unable to manage. This led to Person A having to change schools on several occasions. During this time, she played truant and was a risk to staff.
 - Person A had previously made *'false allegations to the school about me and painted a picture of how neglectful I was to her and how dire her home life was. This is completely untrue ... It is my belief the allegations [Person A] [sic] makes are when she not getting what she wants.'*
 - When Person A made an allegation [PRIVATE], she *'supported her throughout this period and have done so up until she left. I have taken her to attend appointments, encouraged her to speak to police and make a statement, which she eventually did several months later. I took her to two hospital appointments at the Royal Victoria Infirmary Newcastle to [PRIVATE].'* Ms Milburn continues that she also spoke with Children's Services about this.
 - Person A has in fact been verbally and physically abusive to Ms Milburn, including damaging property and stealing from her. Ms Milburn states she made a self-referral for support from Harbour Domestic Abuse service (on 15 September 2020), and she provided a letter of support from them dated 22 January 2021.

- In respect of the incident on 13 September 2020, Ms Milburn denies that her partner ‘ragged’ Person A as suggested. She states that her partner tried to restrain Person A in order to stop Person A from hurting herself.
- In regard to the failing to engage with the Child in Need Assessment (“CIN”), Ms Milburn states that she was concerned that the requirements for such a referral had not been met. She queried this. Further, she was not asked to give an explanation about what had happened with her partner. Ms Milburn accepts that she may have said she would not engage with the Assessment ‘*in the heat of the moment*’ but she has never not engaged with Child In Need services. Further she states that CIN status is ‘*a voluntary agreement, one in which a parent does not have to work with services and should not be penalised for non-participation. It is not a mandatory provision and would be a choice of parents making.*’

Legal Advice

64. The Panel heard and accepted the advice of the legal adviser in respect of the approach to take in determining findings of facts and the burden and standard of proof. The burden of proof rests on Social Work England and it is for Social Work England to prove the Allegation. The legal adviser provided advice on the issues of credibility and reliability, as per the guidance in *R (Dutta) v GMC [2020] EWHC 1974 (Admin)* and guidance on hearsay evidence and the weight to attach to such evidence. Advice was also given in relation to Ms Milburn being a person of good character who prior to this Allegation had no previous regulatory concerns raised against her.

Finding and reasons on facts:

65. The panel found the following facts proved: 1.1 and 2.
66. The panel found the following facts not proved: 1.2.

1.1 Between October 2019 and March 2020, you did not ensure that Person A was properly supported following an allegation that Person A had been [PRIVATE]. Found Proved.

67. The panel relied on the written and oral evidence from Person A that she was the victim of an [PRIVATE] in October 2019, when she was fifteen years old. The evidence that Person A was the victim of an [PRIVATE] is not disputed by Ms Milburn, who states in her written evidence that Person A ‘*made [PRIVATE], which further exacerbated her behaviours at school and home.*’
68. In relation to whether Person A was properly supported, the panel considered this essentially amounts to the word of one person (Person A) against another (Ms Milburn). In reaching its decision on this particular, the panel considered the word ‘*properly*’, and applying its natural ordinary meaning took this to mean ‘*correctly or satisfactorily.*’

69. In oral evidence Person A described how from about the age of eleven or twelve she had received verbal aggression from Ms Milburn, who had used adult language towards her such as swearing and inappropriate name calling. Person A told the panel that when the [PRIVATE] happened, she did not tell Ms Milburn, instead reporting it to school staff. She said this was because she did not have a close relationship with Ms Milburn who *'saw vulnerability as a weakness,'* therefore making Person A reluctant to tell Ms Milburn what had happened. Once Ms Milburn was made aware, Person A recalled that at first Ms Milburn was really nice, behaving like a *'normal parent'* should and making her food which was not a usual occurrence. However, after about a week Ms Milburn told Person A, *'I have had enough'* and went on to say, *'you need to get on with your life and if you're not reporting it, you need to get over it.'* Person A's evidence is that all she really wanted was for Ms Milburn to support her, however Ms Milburn was *'emotionally unavailable.'*
70. Person A acknowledged that Ms Milburn had taken her to one hospital appointment after the [PRIVATE] but that she did not offer to help her with seeking support from any organisation designed to offer guidance or assistance. Person A felt that Ms Milburn's presence at the hospital was more of a show than anything, there was no real care or support, and she did not encourage any follow up appointments. Person A recalled being given information by the Police for a support service called [PRIVATE] which could provide assistance, such as counselling for women [PRIVATE]. However, despite Ms Milburn saying this was a good idea when the Police were present, Ms Milburn never pursued this for Person A, despite Person A asking several times if she could.
71. In contrast to Person A's evidence, Ms Milburn's written evidence is that *'she supported [Person A] [sic] throughout this period...have taken her to attend appointments, encouraged her to speak to police and make a statement...'*
72. Whilst the period for this particular of the Allegation pre-dates the involvement of Melanie Farnell, the panel did take into account her evidence, as she became an allocated Social Worker to Person A in September 2020, and Person A spoke to her about the relationship with Ms Milburn. Ms Farnell states that she was informed by Person A that she *'did not feel like she received emotional warmth'* from Ms Milburn. When exploring Person A's lack of engagement with important health appointments associated with her [PRIVATE], Person A told Melanie Farnell that Ms Milburn *'refused to support her with these.'* When Melanie Farnell asked Ms Milburn about this, she said that Person A *'was old enough to be responsible for these things herself and that she was trying to teach her some responsibility for herself.'* This evidence is supported by the Children and Family Assessment document which notes that Person A *'did not feel able to attend these health appointments by herself and as a result had to ask other adults for support around these.'*
73. In response to questions from the panel during oral evidence, Melanie Farnell said she found Person A to be credible, and that the information she had gathered for her assessment indicated to her that there was emotional neglect. Melanie Farnell said that she did not think Person A *'has reason to lie'* and it was clear that the relationship between Person A and Ms Milburn has been strained for some time. Melanie Farnell said that it would be an expectation for the parents of children open to social care work, to ensure that

children are taken to health appointments and supported with education etc. Melanie Farnell's view was that Ms Milburn did not understand Person A's emotional intelligence level, and that as a child (aged fifteen) Person A seemed to have been left to get on with things herself.

74. In reaching its decision, the panel preferred the evidence of Person A over that of Ms Milburn. The panel placed significant weight on the evidence of Person A, considering her to have provided consistent and compelling evidence. Person A's evidence was corroborated by the evidence of Melanie Farnell. Whilst Melane Farnell was not involved between October 2019 and March 2020, she was appointed as Person A's social worker just six months later, in September 2020. The panel placed reliance on the professional evidence given by Melanie Farnell, who is a registered social worker, and who considered that Person A's allegations against Ms Milburn, provided for the purpose of the Children and Family Assessment, were credible. Both Person A and Melanie Farnell attended the hearing and provided best evidence on oath/affirmation, and were available to be tested by cross examination, if Ms Milburn had wanted. In contrast, Ms Milburn had not been in attendance to give oral evidence or for her evidence to be assessed by cross examination, thus heavily reducing the weight the panel could place on her written evidence.
75. Whilst the panel accepted, as did Person A, that Ms Milburn had appropriately supported her for a period of one week after the [PRIVATE], the panel found that this was not sufficient to consider Child A to have been '*properly*' supported. Child A was fifteen years old at the time of the [PRIVATE], she felt that '*her whole world had crumbled,*' and what she needed was emotional and practical support. The panel found that there was a distinct lack of emotional regard from Ms Milburn and a failure to support or encourage Person A to attend counselling or other relevant organisational support. The panel therefore found particular 1.1 proved.

1.2 On 13 September 2020 you did not ensure that Person A was safeguarded from Person B. FOUND NOT PROVED.

76. The panel had evidence in relation to this particular from a number of sources:
- Person A, who gave both written and oral evidence.
 - HR, who gave both written and oral evidence.
 - MT, who gave both written and oral evidence.
 - Melanie Farnell, who gave both written and oral evidence.
 - Ms Milburn, who provided written submissions.
 - Strategy Meeting Decision document produced by Durham County Council.
77. The panel took into account that it is not in dispute that on 13 September 2020, Person A was at home, and [PRIVATE]. Ms Milburn and her then partner, Person B, were at home at the time. Ms Milburn is reported to have been unaware of [PRIVATE] until Person A's partner, HR, and his mother (Person D) attended the address to inform her about it.

Although Ms Milburn disputes the circumstances of what immediately followed, it does not appear to be disputed that Ms Milburn, Person B, HR, and his mother (Person D) all attended to Person A who was upstairs in the house.

78. In her written statement, Person A states that whilst she was in the [PRIVATE] Person B was poking her eyes and trying to make sure she was awake. Person A considered that Person B was doing it in a [PRIVATE]. In her oral evidence, Person A confirmed that not only was Person A poking her eyes but was also nipping her ears. This was occurring whilst Person D was on the phone to the ambulance, and Person D was telling Person B to stop, but he was not happy about that, and said he was medically trained.
79. Ms Milburn does not deny that Person B pinched Person A's ears and prodded her eyelid in an attempt to see if she blinked or moved, and states that this is *'called pain stimulation technique and is used by paramedics.'*
80. Thereafter, it appears that Person A was attempting to leave the property, having been locked in the house by Ms Milburn. It is not in dispute that Person A did manage to leave the house. At this point Person A recalls that Person B grabbed her hair and punched her in the head.
81. HR recalls being *'really frustrated'* by Person B as he physically assaulted Person A, and he could not believe that Person B would treat a young girl in that way by *'grabbing her by the hair and dragging her about.'* HR states that Ms Milburn *'was witnessing it all and dragging [Person A] [sic] back as well when she should have the best intention for her daughter'*.
82. MT, who was Ms Milburn's neighbour at the time, was witness to some of the events. She gave evidence recalling that she was first aware of a situation because a car drove past her house quite fast and pulled up outside Ms Milburn's house but in doing so had blocked MT's drive. MT recalled hearing lots of *'commotion and a lot of shouting – quite angry shouting.'* MT phoned the Police, who were aware of the incident due to Person D having called them. MT recalled seeing Person A trying to come out of the back door, which MT described as being between both houses. MT said that she saw Person B *'ragging and dragging'* Person A back. MT describes that Person A then struggled with Person B and managed to break free, but when Person A tried to climb the gate, Person B dragged her back.
83. MT said that she was *'shocked'* at Ms Milburn's reaction, given Person B was handling her daughter disgustingly. MT said that Ms Milburn was stood there going *'Oh [Person A] [sic], come on [Person A] [sic] in a very subdued and unintentional manner'* and MT could not believe what she was seeing. MT described the actions of Person B on Person A as *'body grabbing.'*
84. Ms Milburn's written statement denies that Person B was *'ragging'* Person A. Ms Milburn states that Person B restrained Person A, and that he is trained in restraint due to his profession. Ms Milburn states that this was done to keep person A safe and prevent her from leaving the property before she received any necessary treatment from medical professionals.

85. Ms Milburn reports that the Police stated *'they were happy'* with her and Person B's response and efforts to safeguard Person A and that they took no further action as they had responded appropriately.
86. The panel took into account that Ms Milburn's comments about the Police response are corroborated by MT, who states that the Police *'were on the Social Worker's side. They stated that [Person B] [sic] was a trained prison officer and knew how to handle [Person A] [sic] and how to calm somebody down in that kind of situation.'* However, MT states that she asked if their bodycam was on because she thought what the police officer was saying was not right, given that Person A was no bigger than a twelve/thirteen-year-old and Person B was a well-built broad male.
87. The panel had careful regard to the wording of the particular. The panel considered whether Person B's conduct towards Person A was such that it would require being safeguarded from. Whilst the panel did not doubt the evidence of Person A, HR, and MT, all of whom it found gave consistent and credible evidence which accorded with each other, it placed more weight on the documentary evidence available, that being the Strategy Discussion Minutes. The Strategy Meeting took place on 17 September 2020 and was attended by Melanie Farnell, a social work team manager, another social worker, a representative from Durham Police, the school nurse, and an allegations management officer. The purpose of the Strategy Meeting was to discuss the incident on 13 September 2020 and the various allegations arising from it. The conclusion of the meeting was that *'It was agreed that the threshold for a S47 had not been met. [Person A] [sic] is not at an immediate risk of physical harm from [Person B] [sic]. The restraining technique used may not have been appropriate, but professionals could understand the rationale behind him wanting to protect [Person A] [sic] and not let her runaway before the ambulance arrived.'*
88. Whilst the panel accepted that it should draw its own conclusions and not rely on the conclusions of others, it did feel confident in placing significant weight on the view of the professionals who were involved at the time of the incident, that being the Police who attended on the scene and the multi-agency professionals who were part of the Strategy Discussion four days after the event. The panel did not have any direct information from the Police but had corroborating accounts of the Police response from Ms Milburn and MT. The panel considered the Strategy Discussion document to be reliable, as it is a contemporaneous document made in the course of business. Therefore, the panel did not find that Person B had acted in such a way that Person A had required safeguarding by Ms Milburn.
89. The panel accepted that the situation was heated and emotionally charged, and whilst it considered, on the evidence it heard, that Ms Milburn had presented as cold and distant, it did not on balance find that she had failed to ensure that Person A was safeguarded from Person B and found particular 1.2 not proved.

2: Between 17 September 2020 and 16 November 2020 you failed in your duty as a social worker to engage with social services after Person A was made the subject of a Child In Need Assessment. FOUND PROVED.

90. As detailed earlier in this decision, on 13 September 2020 Person A [PRIVATE] and was admitted to the Sunderland General Hospital. Person A expressed that she did not wish to return to Ms Milburn's care because she felt neglected by her mother and did not feel like she received any emotional support.
91. Person A was referred to Durham County Council Young People's Service. Person A's case was allocated to Melanie Farnell, Senior Practitioner, Durham Young People's Services. The panel took into account Ms Farnell's evidence that her role was to carry out the statutory Child & Family Assessment of Person A and then support Person A, if they stayed allocated to her. In carrying out the assessment Melanie Farnell was required to obtain information from various sources including health services and including speaking to Ms Milburn.
92. Melanie Farnell states that Ms Milburn's engagement with the Children and Family Assessment '*consisted of an initial phone call,*' but that her view was that Ms Milburn was very upset by the allegations and did not want to engage with the process. Melanie Farnell states that Ms Milburn said that '*she would only speak to me if she had someone with her or if the call was being recorded as she did not trust me.*' After some persuasion, Ms Milburn gave Melanie Farnell some initial information regarding Person A and Ms Milburn provided a version of events. The phone call was left with Ms Milburn advising that she would not work with Melanie Farnell in the future.
93. Melanie Farnell states that any further contact was by way of text messages from time to time enquiring about A's general wellbeing and with any other concerns she had. In oral evidence, Melanie Farnell expanded on her written evidence explaining that in her view, the text messages were sent on Ms Milburn's terms, not for the benefit of Person A, making it a one-way engagement.
94. Ms Milburn's written submissions state that she does recall being upset, but that if she stated that she would not work with the Child In Need service, it would have been said '*in the heat of the moment.*' Ms Milburn states that in any event, Child In Need status is a voluntary agreement, one in which a parent does not have to work with service, and should not be penalised for non-participation. Ms Milburn states that Durham County Council Children's Services denied her any opportunity to engage despite her willingness to do so.
95. The panel noted the date of this particular is from 17 September 2020 to 16 November 2020. The panel had careful regard to the Child and Family Assessment document included in the bundle noting that it was commenced on 17 September 2020 and concluded on 16 November 2020, therefore accurately reflecting the relevant time period.
96. In reaching its decision on this matter, the panel first had regard to the documentary evidence contained within the bundle which not only included the Child and Family Assessment but also several social care '*Case Notes*' relating to Person A's file made during the relevant period.
97. The panel placed reliance on the documentary evidence, as the documents are contemporaneous and made in the course of business, thus enabling the panel to place significant weight on them.

98. The panel placed significant weight on the 'Case Note' dated 23 September 2020, relating to a conversation Melanie Farnell had with Ms Milburn on 17 September 2020. This states *'Initially Mother advised that she would not work with me and that she would only speak to me if she had someone with her or it was being recorded as she did not trust me. Eventually I persuaded her to provide me with her version of events to help inform the C and F assessment. Debra was very derogatory towards her daughter she called her disgusting and that she was to blame for what had happened and that she had got the sack because of her. Debra advised that she is the victim in all of this and good luck working with [Person A] [sic] as I was going to need it. Debra accused me of making assumptions about her and being manipulated by [Person A] [sic]. Debra continued to state that had been putting the [PRIVATE] and that she could really act-in fact Debra stated that her daughter should get an Oscar for her performance with everyone including [PRIVATE]. The phone call was left with Debra advising that she would not work with me in the future (I had asked if I could give her a ring to gather more information) but when she was less emotional as it had been a very hard day for her to manage and I was concerned for her emotional wellbeing.'*
99. The 'Case Note' dated 23 September 2020, accords with the contents of the Children and Family Assessment document which also includes a 'Managers Comments' section which states *'It has been difficult to establish a more robust assessment of past experiences...due to mothers refusal to engage with services.'*
100. The panel took into account that the wording of this particular includes the failure of Ms Milburn's duty as a social worker to engage, as opposed to a failure as a parent to engage. The panel asked a number of questions of Melanie Farnell during her oral evidence to press her on why Ms Milburn's actions would be considered a failure to engage. The panel found Melanie Farnell to give entirely compelling and professional evidence in response to the questions, and the panel attached significant weight to her answers. Melanie Farnell described Ms Milburn's behaviour as *'emotionally cold'* and dismissive. She did not expect her to be this dismissive when talking about her daughter and also talking with a *'fellow professional'*. Melanie Farnell conceded that as *'a mother,'* Ms Milburn's duty to engage with the Child and Family Assessment was *'voluntary,'* but that as a social worker Ms Milburn *'had a duty of care to engage with the assessment.'* Melanie Farnell stated that Ms Milburn's *'choice to not engage was not helpful for A and it was not helpful for the assessment.'*
101. In oral evidence, which was not undermined, Melanie Farnell told the panel that if someone is not only a mother but also a social worker, they should have a greater knowledge and awareness of what was needed in terms of engagement with the process. In terms of the greater understanding of what Child A required, Melanie Farnell said that *'100%'* someone in Ms Milburn's professional position (which was a higher role than Melanie Farnell's) and who is professionally trained should have had a greater appreciation for the Assessment process. Instead, she considered Ms Milburn to have been unhelpful and *'on occasion obstructive,'* and *'putting obstacles in the way'* almost as a *'form of punishment'* against Person A.

102. On balance, whilst accepting that there was no statutory requirement as a mother for Ms Milburn to engage with the Child and Family Assessment, the panel found that as a social worker she should have engaged. The panel considered that with the level of experience Ms Milburn has, as taken from her own accounts and references, she would have the professional understanding and knowledge, of why it is important to engage with an Assessment and do everything possible to assist for the benefit of a child, in this case her own child-Person A.
103. The panel found Ms Milburn had failed in her duty as a social worker to engage with social services after Person A was made the subject of a Child In Need Assessment and therefore found particular 2, proved.

Finding and reasons on grounds:

Social Work England

104. The panel heard submissions from Mr Santos on the statutory ground of misconduct and the issue of impairment, but it decided on each stage separately and each stage is dealt with under separate headings below.
105. Mr Santos referred the panel to the '*Statement of Case*' and submitted that Ms Milburn was in breach of Social Work England Standard 5.1 and 5.2, and the HCPC Standards of Conduct, Performance and Ethics (2016) namely 2.1, 7.2, 7.3 and 9.1.
106. Mr Santos acknowledged that the facts of the Allegation relate to Ms Milburn's personal life and her conduct / behaviour exhibited towards her daughter, Person A. However, he submitted that this is relevant, and it potentially could have a direct impact upon Ms Milburn's ability to carry out her role and function as a practising social worker. He submitted that the conduct is potentially relevant to Ms Milburn's empathy, relatability, and interpersonal skills as a social worker. He said that Person A was vulnerable, and Ms Milburn should have helped her to engage with the relevant services and support her after the [PRIVATE]. He said Person A should have expected to receive a certain level of care from Ms Milburn, not only as a parent but as a professional social worker.
107. Mr Santos said that the Social Work England Professional Standards state that a social worker will not behave in a way that would bring into question their suitability to work as a social worker whilst at work, or outside of work. He submitted that there is a reasonable expectation that social workers would engage with social services in their own personal lives. This expectation would be greater in light of Ms Milburn's role as an IRO (Independent Reviewing Officer) in a senior position. Similarly, given her role, Ms Milburn would appreciate the necessity of such an assessment being referred and the need for those completing it to have as much information and input as possible to make the best decision in Person A's interests. There would be an expectation that Ms Milburn would comply and be involved in the assessment due to her role and understanding of the nature of the

Assessment. Instead, Ms Milburn was obstructive in her manner towards Melanie Farnell and failed to properly engage with the Assessment.

108. Mr Santos submitted that the public view of Ms Milburn's conduct should be considered. He submitted that the views of the public can be inferred from the comments of both MT and HR. Mr Santos said that there is a need for the public to have trust and confidence in the social work profession, and those social workers who are practising. The question over Ms Milburn's conduct is that if she is not applying proper parenting to her own child how she could be trusted to carry out her own professional duties.
109. Mr Santos submitted that the facts found proved do amount to misconduct.

Ms Milburn

110. Although Ms Milburn was not present, the panel took into account her written submissions. It is implicit from her submissions, that she denies her conduct amounts to the statutory ground of misconduct. Ms Milburn sets out her concerns about the conduct of Durham County Council and Social Work England in relation to how they have dealt with her and the regulatory investigation.
111. In part, Ms Milburn's written submissions dated 24 August 2023, state:

'In accordance with the SWE rule 5.1 (I have never intentionally or maliciously abused anyone). I acknowledge at times I have been, exacerbated, frustrated and disgruntled at times, with my own daughter. However, this should not be construed as abuse, [Person A] [sic] was a well-cared for and loved member of the family.'

'The allegations justifying SWE intervention in this case are based upon the concept that the problems within my family are somehow reflective of professional misconduct and incompetence on my part. Respectfully, I would suggest the elements bringing Social Work England into a state of disrepute in this case are their very own actions'.

Legal Advice

112. The panel heard and accepted legal advice from the legal adviser on the issue of misconduct. The legal adviser referred to the case of *Roylance v General Medical Council (No 2) 2000 1 AC 311*. 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.

Panel Decision

113. The HCPC Standards of conduct, performance and ethics were the threshold standards in place for social workers until 02 December 2019, when the Social Work England standards

became the relevant standards, following a transfer of responsibility for the regulation of social workers. Therefore, both the HCPC and Social Work England standards are relevant to fact 1.1, but only the Social Work England Standards are relevant to fact 2. The Standards set out how a social worker in England must behave and what the public should expect from their profession. The panel bore in mind that a departure from the standards does not necessarily constitute misconduct.

114. The panel considered that the behaviours of Ms Milburn in relation to facts: 1.1, and 2, do amount to serious professional misconduct.
115. In relation to the failure to properly support Person A after the [PRIVATE], the panel accepted that this occurred in Ms Milburn's private life and indeed during a time where she and Person A appeared to have a difficult relationship. However, this was a significant incident for Person A, who was only fifteen at the time and who felt that her entire world had '*crumbled*'. As a child, Person A should have been afforded proper support from Ms Milburn to ensure she received the emotional guidance and assistance she required. However, this support was only provided by Ms Milburn to Person A for one week during a six-month period, after which her attitude was that Person A should move on from the alleged incident .
116. As a fellow registered professional Melanie Farnell had described Ms Milburn's behaviour towards Person A as emotionally neglectful and said that Person A seemed to have been left to get on with things by herself. HR, a member of the public, stated that if Ms Milburn '*cannot support her child I do not know how she could ever support someone who she is not related to, potentially in an even worse situation to [Person A] [sic]*'.
117. The panel had regard to HCPC Standard 7.3 which requires social workers to take appropriate action if they have concerns about the safety or well-being of children or vulnerable adults. The panel found that the failure to properly support Person A was a clear breach of 7.3 given how significant the impact of the [PRIVATE] was on Person A and her well-being. The panel also found that Ms Milburn was in breach of HCPC Standard 2.1, as her conduct in telling Person A to '*get on with your life and if you're not reporting it, you need to get over it*', was not polite or considerate.
118. The panel concluded that Ms Milburn's conduct in relation to fact 1.1 was unacceptable and whilst it occurred outside her professional practice, it was of the kind to bring disgrace upon Ms Milburn, as evidenced in the views of Melanie Farnell and HR, and thereby prejudice the reputation of the social work profession. Such behaviour was in breach of HCPC Standard 9.1 – '*you must make sure that your conduct justifies the public's trust and confidence in you and your profession*' and the Social Work England Professional Standard 5.2 – '*As a social worker, I will not: Behave in a way that would bring into question my suitability to work as a social worker whilst at work, or outside of work.*'
119. In relation to the failure by Ms Milburn (in her duty as a social worker) to engage with social services, after Person A was made the subject of a Child In Need Assessment, the panel concluded this amounted to misconduct. The panel found that as an experienced social worker, working as an Independent Reviewing Officer, whose role is to serve children's best

interests, there is an inherent expectation that Ms Milburn would have engaged with social services involvement with her own child (Person A). Ms Milburn's understanding and experience of social work practice meant that she should have appreciated the importance of the Child and Family Assessment. This included the need to provide Melanie Farnell with as much information and input as possible, to enable the best decisions to be made for Person A. The panel found that Ms Milburn's failure to engage was in clear breach of Social Work England Standard 5.2, which includes behaviour outside of work.

120. The panel concluded that it was unacceptable and inappropriate for Ms Milburn, as a registered social worker, not to engage with the Child and Family Assessment. As a fellow practitioner, Melanie Farnell notes, Ms Milburn's failure to engage '*was not helpful for A and it was not helpful for the assessment*'. The panel considered that Ms Milburn's conduct would bring the profession into disrepute and would undermine the social work profession. The panel had in mind that if service users open to Ms Milburn, were aware of her failure to engage with a Child and Family Assessment in relation to her own child, this could set a negative example of how they should be working and undermine the trust and confidence in the social work profession.
121. 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.

Finding and reasons on current impairment:

Social Work England

122. Mr Santos submitted that Ms Milburn has shown no insight into her conduct at all. In fact, Ms Milburn states that Person A is the one at fault for all of this, and that Person A is causing trouble by making false allegations. Mr Santos submitted that there is no appreciation by Ms Milburn of the severity of her conduct, and therefore, the risk of repetition remains high. Mr Santos said that this is further exacerbated by Ms Milburn refusing to engage with the regulatory hearing process.
123. Mr Santos submitted that Ms Milburn has shown no remorse in relation to her conduct. He submitted that this goes to the heart of the Allegation in that Ms Milburn displays a lack of understanding or empathy towards Person A, which may well impact on her attitude to her social work practice. This would leave members of the public at risk of not being taken seriously or adequately safeguarded by her.
124. Mr Santos reminded the panel of the need to consider the wider public interest, submitting that the public would expect a certain level of insight from Ms Milburn. Further, they would expect a social worker to engage with various processes attached to social work, whether in a professional or a personal capacity. Mr Santos submitted that it undermines the public confidence in the profession if a social worker is not adhering to the assessments which social workers are in fact trying to enforce. The public would view that Ms Milburn is not engaging with this safeguarding measure, so why should they.

125. Mr Santos submitted that Ms Milburn's fitness to practise is currently impaired by reason of misconduct.

Ms Milburn

126. Although Ms Milburn was not present, the panel took into account her written submissions. In part, her submissions of 24 August 2023 state as follows:

'This case has dragged on for three years. Three years in which I have been unable to work within the social work field. As a result, not only have I lost career, but I have also lost my home, my positive sense of well-being and most importantly, I have lost my relationship with my daughter. I have no way of communicating with her, and have no knowledge of how she is, where she is and whether her general welfare is stable. I find myself grieving for the loss of her, which has impacted on my [PRIVATE] and sense of well-being. I have found this experience particularly distressing at Christmas and New Year, as this was always family orientated and happy time - and of the utmost importance to us all... The arrival of any correspondence in relation to this matter (which I have asked not to receive) causes me to experience [PRIVATE], and contributes to [PRIVATE] - yet still they continued to bombard me'.

Legal Advice

127. 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 heard advice on and took into account the cases of *CHRE v (1) NMC & (2) Grant [2011] EWHC 927 (Admin)*, *Cohen v GMC [2008] EWHC 581 [Admin]*, and *Cheatle v GMC (2009) EWHC 645 (Admin)*. The panel considered the Social Work England 'Impairment and Sanctions' guidance updated 19 December 2022, which includes information on assessing impairment.

Panel Decision

128. The panel considered Ms Milburn'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 likely to be repeated.
129. In deciding impairment, the panel considered whether:
- 1- Ms Milburn has in the past and/or is liable in the future to place service users at unwarranted risk of harm.
 - 2- Ms Milburn has in the past brought and/or is liable in the future to bring the profession into disrepute.

3- Ms Milburn has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

130. In relation to the first question the panel determined that based on the evidence before it, Ms Milburn has not in the past placed service users at unwarranted risk of harm.
131. In relation to the question of whether Ms Milburn 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 panel took the view that members of the public would be extremely concerned to learn that a registered social worker had behaved in the manner found in Ms Milburn's case even though the events occurred in her private life.
132. In finding that Ms Milburn did not conduct herself in such a way as to adhere to the HCPC and Social Work England Professional Standards, the panel determined that she had breached fundamental tenets of the social work profession. The panel considered that promoting and maintaining the wellbeing of people and effective communication are fundamental tenets of social work and lie at the heart of social work practice. The misconduct found by the panel evidences that Ms Milburn was not properly supporting Person A's wellbeing after the [PRIVATE] and nor was Ms Milburn effectively communicating with Melanie Farnell for the purpose of ensuring an accurate and informed Assessment that would best meet Person A's needs.
133. The panel considered the extent to which the misconduct in this case can be, and has been remediated by Ms Milburn, and whether it is likely to be repeated.
134. The panel kept in mind that the facts found against Ms Milburn relate to her character rather than her professional practice, although it found such conduct could be capable of flowing into Ms Milburn's practice. Character concerns are often harder to remediate because it is more difficult to produce objective evidence of reformed character. Nonetheless, the panel did consider that the misconduct found was capable of being remedied providing that sufficient insight and reflection could be evidenced.
135. The panel took into account the detail provided by Ms Milburn about the circumstances at the time of the misconduct, in which Ms Milburn describes a turbulent relationship with Person A, as a result of Person A's attitudes and behaviours. However, the panel concluded that Ms Milburn has shown no insight into the impact of her behaviour either on Person A, or the wider public, focusing mainly on the impact the events and subsequent investigations have had on her life. Whatever the difficulties Person A was displaying, she was a child, and Ms Milburn was the adult, and more specifically, a trained social work professional, and therefore she was well placed to have done what was expected of her in the circumstances.
136. The panel noted that Ms Milburn has not provided any evidence of remediation and the reflections she provided attribute blame to others rather than reflecting on what she could or should have done differently. In relation to the Child and Family Assessment, Ms Milburn states, *'Instead, I was not listened to, I was ignored by the Social Worker and I was blatantly lied about by the Team Manager, with the end result manifesting as a character*

assassination within a Core Assessment report. This assessment contained lies, factual inaccuracies, unsubstantiated information and an enormous and unhelpful dollop of hearsay. To this day I have not completed reading the report as I found the lies and inaccuracies contained within to be incredibly distressing, and I had to stop engaging with the document [PRIVATE].

137. In written submissions (dated 04 September 2023), Ms Milburn states, *'This whole hearing has literally no meaning for me, I know the truth and my life will carry on. I have requested de-registration; I have no intention to return to a profession governed by an unethical company who has no governance in respect of their own practice'*. The panel had no confidence that Ms Milburn recognises what went wrong, nor that she accepts her role and responsibility in relation to the events. The panel found that Ms Milburn has shown no remorse for her conduct which is a theme that was evident within the facts and misconduct found. For example, when Ms Milburn told Melanie Farnell that Person A deserved *'an Oscar for the way she behaved when she [PRIVATE]*. Whilst the panel acknowledge that Ms Milburn had to an extent engaged with Social Work England, it considered this to be limited and to be hostile rather than co-operative in nature.
138. Due to the sustained nature of Ms Milburn's attitude (from October 2019 – November 2020), the lack of insight, and lack of remediation the panel concluded that the risk of repetition remains. Whilst the panel acknowledged the repetition of behaviour would not relate to Person A, it considered that the individuals or families Ms Milburn worked with would be at risk, due to the misconduct. This is because the nature of the misconduct, albeit occurring in Ms Milburn's personal life, is likely to arise in her future professional conduct. The misconduct related to supporting vulnerable people and communicating effectively with professionals in the course of assessments to ensure the best outcome. The conduct could therefore flow into Ms Milburn's professional practice which requires her to be empathic, supportive and communicate effectively with other professionals to ensure the best interests of service users are met.
139. The panel took into account the testimonials provided by Ms Milburn and in doing so had regard to paragraphs 52-59 of the *'Impairment and Sanctions'* guidance. The panel placed limited weight on them as it found the content was not relevant to the specific Allegation in the case, instead they speak more generically about the issues with Person A and seek to undermine evidence from Durham County Council. The panel was not persuaded that those writing the testimonials had had full disclosure of the Allegation under consideration.
140. The panel determined that Ms Milburn's fitness to practise is currently personally impaired on the grounds of her misconduct.
141. 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 the *NMC v Grant* case 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.'

142. The panel considered that members of the public, even if they knew that the misconduct occurred within Ms Milburn's personal life, would be concerned if Social Work England, were not to mark the seriousness of Ms Milburn's misconduct with a finding of current impairment on public interest grounds. The panel considered that not to make a finding of current impairment of fitness to practise in relation to the facts of this case would undermine public trust and confidence in the profession and would fail to uphold and declare proper standards. In reaching its decision the panel bore in mind HR's evidence, who as a member of the public, had not known at the time he met Ms Milburn that she was a social worker, but felt that he could not imagine that Ms Milburn could provide the support service users needed, having considered her failures to support Person A. HR states that, he '*could not express how distraught I would be if I found out [Ms Milburn] [sic] was in a job like that again myself*'.
143. The panel therefore decided on the public interest element of impairment that Ms Milburn's fitness to practise is currently impaired.

Decision and reasons on sanction:

Social Work England

144. The panel heard submissions from Mr Santos on behalf of Social Work England. Mr Santos drew the panel's attention to the Social Work England '*Impairment and Sanctions*' guidance ("Sanctions guidance") updated 19 December 2022.
145. Mr Santos submitted that the most appropriate order to impose on Ms Milburn was a suspension order. He submitted that whilst it is possible for the panel to make a removal order, having found misconduct, a removal order is for the most serious misconduct, and whilst some features of Ms Milburn's case meet the criteria, it is not at the high end of seriousness.
146. Mr Santos submitted that following the panel's determination that Ms Milburn's impairment poses a current risk to the public, it would be reasonable to move beyond no action, advice/warning as these sanctions would not protect the public and would allow Ms Milburn to practise unrestricted.
147. Mr Santos submitted that a conditions of practice order would not be appropriate in this case due to the lack of insight evidenced by Ms Milburn together with the conduct being attitudinal in nature.
148. Mr Santos submitted that there were mitigations in Ms Milburn's case that the panel should keep in mind when reaching a decision on sanction. Mr Santos said that the misconduct took place in Ms Milburn's private life, that there was a lack of detail in some parts of

Person A's evidence, that the panel did not find 1.2 proved and Ms Milburn has provided character references about Person A's attitude towards her.

149. Mr Santos submitted that the misconduct was aggravated as Ms Milburn has not engaged with the final hearing process, she was an experienced social worker, and her misconduct was maintained over a period of time.
150. Mr Santos submitted that a suspension order would protect the public and would be the most appropriate and proportionate order.
151. Mr Santos did not make any submissions on the proposed length of suspension.

Legal Advice

152. The panel heard and accepted the legal advice from the legal adviser on all the available options on sanction as set out in the Regulations. The panel was advised to consider the 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.

Panel Decision

153. The panel applied the principle of proportionality by weighing Ms Milburn'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.
154. The panel identified the following mitigating factors:
 - Ms Milburn has no previous adverse regulatory findings against her and has partially engaged with the Social Work England investigation and regulatory process.
 - Ms Milburn and Person A had a difficult and turbulent relationship.
 - Ms Milburn has provided positive testimonials relating to her professional social work practice and good character, from her previous team manager and two social work colleagues.
155. The panel identified the following aggravating factors:
 - Ms Milburn's failure to engage with the Child and Family Assessment given her knowledge and experience of social work practice.
 - Ms Milburn's conduct continued from October 2019 to November 2020.
 - Ms Milburn's lack of insight, remorse, and remediation to date.
156. Considering the serious nature of the findings of fact, the panel decided that taking no further action, or issuing advice or a warning, would not be appropriate in this case as these

sanctions would not restrict Ms Milburn's practice and would therefore not protect the public from the risks that have been identified.

157. The panel went on to consider whether a conditions of practice order would be appropriate. It is difficult to see how a conditions of practice order might address and safeguard members of the public from the risks of the attitudinal nature and behavioural failings found in Ms Milburn's case. The panel reminded itself that it had found Ms Milburn had not remediated and there was risk of repetition. With this in mind the panel considered that conditions of practice would not be guaranteed to prevent the risk of repetition. The facts found in Ms Milburn's case relate to her character and attitude which make conditions of practice hard to formulate. The panel noted its earlier determination that Ms Milburn had shown no insight and therefore the panel could not be confident that Ms Milburn would comply with conditions even if conditions could be formulated. The panel therefore concluded that a conditions of practice order is not sufficient to protect the public.
158. The panel then considered whether a suspension order should be imposed to protect the public and the wider public interest. The panel considered that suspension orders can be imposed for a period of up to three years. It noted from the Sanctions guidance that *'suspension is appropriate where no workable conditions can be formulated that can protect the public or the wider public interest, but where the case falls short of requiring removal from the register or where removal is not an option.'* The panel had in mind that the purpose of a suspension order is not to punish but to protect the public and public interest.
159. The panel asked itself what a period of suspension would seek to achieve in Ms Milburn's case. A period of suspension would provide an opportunity for Ms Milburn to seek to address the misconduct findings made against her. The panel reminded itself that it had found that whilst character concerns are often harder to remediate, it did consider that the misconduct found was capable of being remedied providing that sufficient insight and reflection could be evidenced. The panel took into account that whilst it had not found evidence of insight, Ms Milburn has been partially engaging with Social Work England, including providing further submissions as recently as 08 September 2023. Within those submissions there is consideration by Ms Milburn of the impact the hearing could have on Person A's [PRIVATE]. The panel did not find that this amounted to a demonstration of insight, but when considered alongside the positive testimonials that Ms Milburn had been a conscientious social worker who had *'high standards'*, it found that there was enough evidence to satisfy it that a period of suspension could be used by Ms Milburn for reflection, understanding and the development of insight.
160. The panel kept in mind that it should select the least restrictive sanction necessary to protect the public and the wider public interest. The panel took into account the strong submissions made by Mr Santos that Social Work England, as Ms Milburn's regulator, believes that a suspension order would be the appropriate and proportionate order in this case. The panel agreed that a suspension order would sufficiently protect the public and meet the wider public interest.

161. The panel took into account that a suspension order might cause Ms Milburn financial hardship and reputational damage, however, the panel concluded that the protection of the public outweighs the harm that might be caused to Ms Milburn by the imposition of this order.
162. The panel went on to consider the duration of the suspension order and concluded that a period of three years would be necessary and proportionate and would reflect the seriousness of the misconduct. This period will allow Ms Milburn to consider her future within the profession, to develop her insight and attempt to address the impairment in her fitness to practise.
163. In order to satisfy itself of the appropriateness and proportionality of a suspension order, the panel tested it against the most restrictive sanction, that of removal.
164. The panel took into account the Sanctions Guidance which states:
- ‘A removal order must be made where the decision makers conclude that no other outcome would be enough to (do one or more of the following):*
- *protect the public*
 - *maintain confidence in the profession*
 - *maintain proper professional standards for social workers in England’.*
165. The panel considered that a removal order is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public and the wider public interest. The panel decided that Ms Milburn’s case falls short of requiring removal as the findings against her were not of such gravity as those set out at paragraph 149 of the Sanctions guidance.
166. The panel concluded that a three-year suspension order was therefore the appropriate and proportionate order in all the circumstances of Ms Milburn’s case.
167. The panel would encourage Ms Milburn to engage with Social Work England prior to the hearing that will be held to review this order and to attend at the review hearing. In the absence of improved insight or other remediation upon a review, it will be open to a reviewing panel to consider imposing a removal order. The panel believes that the following actions would help a future panel undertaking the review to establish whether Ms Milburn’s practice remains impaired:
- (i) A written reflective statement using a recognised model addressing the misconduct and the impact it did/could have on Person A/service users/the profession.
 - (ii) Evidence of remediation to put right the deficiencies and shortfalls identified by the panel. This could include participation in training linked to the findings of fact in this case, such as value-based training.
 - (iii) Evidence of maintaining continuing education and professional development.

- (iv) Testimonials from any workplace whether the employment is paid or unpaid.

Interim Order:

168. Mr Santos asked the panel to make an interim order to cover the appeal period. He submitted that an interim order is necessary to protect the public in light of the findings made by the panel. He indicated that Ms Milburn has already been subject to an interim suspension order pending this final hearing.
169. The panel heard and accepted the advice of the legal adviser in relation to the test for interim orders. To impose an interim order in the present circumstances it needed to be satisfied that such an order was necessary for the protection of the public which includes the public interest.
170. The panel was mindful of its earlier findings and decided that it would be wholly incompatible with those earlier findings if an interim suspension order was not made.
171. Accordingly, the panel concluded that an eighteen-month interim suspension order is necessary for the protection of the public. When the appeal period expires, this interim order will come to an end unless an appeal has been filed with the High Court. If there is no appeal, the final order of suspension shall take effect when the appeal period expires.

Right of appeal:

172. 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.
173. 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.
174. 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.

175. 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:

176. 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.

177. 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:

178. 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>.