

Social worker: Michael Edward  
Thornton

Registration number: SW36938

Fitness to Practise

Final Hearing

Dates of hearing: 17 – 20 May 2021; 13 -17 December 2021; 9 – 17 January  
2023; 26 – 31 October 2023 & 1 - 3 November 2023

Hearing venue: Remote hearing

Hearing outcome: Removal Order

Interim order: Interim suspension order (18 months)

### Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) (the regulations)
2. Mr Thornton attended and was represented by Ms Molyneux of Counsel.
3. Social Work England was represented by Mr Hamlet of Counsel for the May 2021 and December 2021 sitting; Ms Puri of Counsel for the January 2023 sitting; and Ms Tai for the October/November 2023 sitting.

| Adjudicators       | Role                      |
|--------------------|---------------------------|
| Andrew Skelton     | Chair                     |
| Vicki Lawson-Brown | Social worker adjudicator |
| John Brookes       | Lay adjudicator           |

  

|                      |                          |
|----------------------|--------------------------|
| Natasha Quainoo      | Hearings officer         |
| Heather Hibbins      | Hearings support officer |
| Lucia Whittle-Martin | Legal adviser            |

### Preliminary matters

#### Application to amend

4. Mr Hamlet applied to amend the allegation. He submitted that replacing the word “with” in Particular 1(a) with “involving”, and adding the word “indecent” to Particular 1(b), provided greater clarity. He submitted that the addition of the new Particular 3 was a legal requirement, in the light of the way in which Social Work England puts its case.
5. Ms Molyneux did not object to the application.
6. The panel accepted the advice of the legal adviser. The panel decided to allow the application in its entirety, for the reasons put forward by Mr Hamlet, unopposed by Ms Molyneux. The panel concluded that the amendments to Particulars 1(a) and 1(b) provided greater clarity and caused no unfairness. The panel accepted that the addition of Particular 3 was a legal requirement.

### Allegation

7. The allegation, as amended, is as follows:
  1. In or around January 2011, via an online forum, you on one or more occasion:
    - (a) Engaged in discussions relating to sexual activity involving children
    - (b) Exchanged and/or viewed indecent images of children

2. From 21 February 2017 to 9 April 2017, you accessed a sex story website via a phone on which you visited stories that depicted sexual activity involving children
3. Your conduct as described at paragraphs 1 and/or 2 was sexually motivated.

### Background and Social Work England's case

8. Mr Thornton registered as a social worker in 2010. He had been employed by Leicester City Council ("the Council") as a senior practitioner between 2001 and 2010, and was then employed by the Council as an Independent Reviewing Officer from 2010 until June 2019. His role as a registered social worker involved working with vulnerable young people under the age of 18, reviewing services provided to Looked after Children and children in need of protection.
9. In 2018 Mr Thornton came to the attention of the police when his email address featured in an investigation relating to Person A, a person suspected of involvement in the exchange of indecent images of children.
10. Person A's electronic devices had been seized and analysed. One of the devices revealed a log of chats between Person A and other individuals discussing and exchanging indecent images of children. In a chat log dated 1 January 2011, Person A talked privately with two other users by means of MSN Messenger. The users identified themselves by means of their email address. One of the email addresses was an address used by Mr Thornton, referred to in this hearing as "the Thunderball address".
11. It was alleged by Social Work England that the chat with the Thunderball address involved discussions relating to sexual activity involving children, Charge 1(a), and that indecent images of children were being exchanged and/or viewed, Charge 1(b). The messages spanned over a period of approximately 1 ½ hours, from 21.20.02 to 22.58.51, and read as follows:

("O" refers to an address other than Thunderball  
"T" refers to the Thunderball address)

O: add to this

T: teens u?

O: nice pussy

O: same send me one you like no limits so I know wot to send back

O: to young or ok

O: nice

O: never too young

O: you like young then

T: nice  
O: young and old  
O: ok send me a young and a old no limits  
O: that ok  
T: yeh pal  
O: not to young then  
T: not at all  
O: u like  
O: nice  
O: cool  
T: mmmmmmm  
O: younger or ok  
O: your turn  
T: I'll let u know when u go too yng  
O: nice ass  
O: nice nipples  
O: wot the youngest you got  
O: her  
O: and you  
O: hard to get hold of ha  
O: would love to fill her  
O: all night  
O: hold her down and fill her ass  
O: im getting hard  
O: you have any vids  
O: any older around 30ish  
T: yeh  
O: like this whore  
O: wot you got  
T: teens  
O: vid  
O: you wanna wank me  
T: whats it of?  
O: youngish teen playing  
T: how old?  
O: don't know ive never done that befor  
O: 17  
O: well you can watch if you like  
T: very good  
T: mine ok?  
O: you ok me watching

O: fuck yes  
 O: ok then this feels strange  
 O: why  
 O: im hard now  
 O: over what  
 T: what u got?  
 O: pics and thinking about watching you wank  
 O: cool  
 O: when do you wanna see me wank  
 O: wot you got  
 T: about 14/15  
 O: any time you have cam  
 T: how ynys she?  
 O: no can we can meet  
 O: 13  
 O: cam  
 O: any more pics  
 O: was that ok  
 T: mmmm very cute  
 T: ?  
 T: u now  
 T: ?  
 O: have any anle  
 T: nah sorry  
 T: hot vid how old?  
 O: I think 16  
 T: I'd agree luv that her tits r so big and pert so don't drop when she takes her bra off  
 O: im getting hard now  
 T: me too  
 T: u  
 T: you've already sent those pal  
 O: im so hard now got precum  
 O: im bi you have any cock vids

12. On 23 April 2019, DC Waddington made contact with the Council's designated Local Area Designated Officer ("LADO") and an information sharing conference took place on the same day, which Mr Thornton attended.
13. Mr Thornton was arrested and interviewed under caution by DC Waddington. Mr Thornton accepted that the Thunderball address was his email address and that he had used it from late 2008 to 2014/2015. He denied possessing indecent images of children.

He claimed that his Facebook account had been hacked *"sometime last year"* and claimed that he had changed his email address. He admitted that he had used MSN Messenger to talk to other people about sex and about *"teens"*, but claimed that this related solely to teenagers aged 18 and 19, not children. He denied any involvement in the conversation in the chat log discovered by the police. He said that he had lived alone at the time of the chat log, but that people visiting his house could have accessed the computer.

14. Following Mr Thornton's arrest, multiple devices were seized from his home and place of work by the police for examination.
15. No indecent images of children were recovered from any of the devices, nor were any chats relating to children found, nor was there evidence of any searched terms regarding indecent images of children.
16. However an analysis of an old Samsung mobile phone belonging to Mr Thornton, conducted by DC Waddington on 2 May 2019, revealed that the phone had been used between February and April 2017 to access a "sex story site", which provided fictitious stories of a sexual nature. It was alleged that 9 of the stories accessed centred on fictitious sexual activity with children. It was alleged that whilst the stories had not been opened for long, the description provided by the title was enough to alert the reader to the fact that the story was likely to depict sexual activity with a child. The titles and time of access were as follows:
  - (i) *"Julie 3 cheerleader sleepover"* accessed at 08.00.26 on 9 April 2017
  - (ii) *"PE class"* accessed at 08.12.50 on 6 March 2017
  - (iii) *"Child prostitute"* accessed at 07.50.21 on 21 February 2017
  - (iv) *"Wayne.ker"* accessed at 12.21.49 on 2 April 2017
  - (v) *"Young/s-date"* accessed at 08.00.32 on 9 April 2017
  - (vi) *"the run\_away"* accessed at 08.16.59 on 6 March 2017
  - (vii) *"found daddy's naughty school tapes"* accessed at 13.30.46 on 9 March 2017
  - (viii) *"my stepdaughter and her friend"* accessed at 12.19.45 on 2 April 2017
  - (ix) *"dad is my pimp part 3"* accessed at 12.20.32 on 2 April 2017
17. It was alleged that the content of the stories themselves clearly depicted sexual activity involving children.
18. No criminal prosecution was brought against Mr Thornton. DC Waddington explained that this was because no indecent images of children were recovered on any of Mr Thornton's devices, and a discussion of sexual activity involving children does not of itself amount to a criminal offence.

## Evidence called on behalf of Social Work England

19. SWE called two witnesses:
  - TB, employed by the Council as Head of Service for Children Safeguarding, Quality Assurance and Participation;
  - DC Waddington.
20. TB confirmed that Mr Thornton had been employed by the Council for several years and was regarded as a trustworthy and honest social worker, with no previous complaints against his name.
21. TB was present at the LADO meeting of 23 April 2019. He informed the panel that in the course of the meeting Mr Thornton accepted that the Thunderball email address was his but claimed that his computer had been hacked and that he had reported this to the police.
22. DC Waddington informed the panel that at the time of arrest Mr Thornton told him that his email account had been hacked.
23. DC Waddington conceded that Mr Thornton's mobile phone had not been sent for forensic analysis. He said that he conducted the analysis of Mr Thornton's phone himself, on 2 May 2019. He explained that the stories were not stored on the mobile phone itself. However a number of internet links were found, providing the titles of stories, which DC Waddington opened and viewed. He accepted that the relevant links had been opened by the user for a short amount of time. He claimed that this would have been enough time to skim them at the very least.
24. DC Waddington provided the panel with the titles and his own description of the stories accessed on Mr Thornton's mobile phone, as follows:
  - (i) *"Julie 3 cheerleader sleepover"* described by DC Waddington as *"child sex story of 16-18 year olds"*
  - (ii) *"PE class"* described by DC Waddington as *"child story of 13-16 yrs old having sex"*
  - (iii) *"Child prostitute"* described by DC Waddington as *"child story of 16 yr old prostitute"*
  - (iv) *"Wayne.ker"* described by DC Waddington as *"Index of stories about children and incest"*
  - (v) *"Young/s-date"* described by DC Waddington as *"Index of stories about children and incest"*

- (vi) *“the run\_away”* which DC Waddington said was no longer online
  - (vii) *“found daddy rsquo s naughty school tapes”* described by DC Waddington as *“sex story about incest with 14 yr old child”*
  - (viii) *“my stepdaughter and her friend”* described by DC Waddington as *“sex story about incest”*
  - (ix) *“dad is my pimp part 3”* which DC Waddington said was no longer online.
25. In cross-examination, DC Waddington said that story “i” related to 15/16 year olds; story “ii” related to a 13-16 year old; story “iii” related to a 16 year old; story “vii” related to a 14/15 year old; and story “viii” related to an 18 year old.
26. DC Waddington said that he downloaded the content of the 9 stories found by him on Mr Thornton’s mobile phone, which he exhibited as Exhibit RG/4. In cross-examination he accepted that he had not downloaded the material on the date he first examined it, 2 May 2019. Rather, he explained that RGW/4 consisted of material that he had downloaded from the same site on a later date, 10 August 2020, by use of a web archive known as the “Wayback machine”. He was asked to provide that material for parties to see, in response to which he provided material which he exhibited as RGW/18. In cross-examination it transpired that RGW/18 was in fact material that he had downloaded from the same site but on an even later date, mid hearing on 18 May 2021. It was suggested on behalf of Mr Thornton that DC Waddington was deliberately seeking to mislead the panel by providing material that was not in fact the product of the analysis he conducted on 2 May 2019.
27. The content of the RGW/4 and RGW/18 was provided for the panel to read.
28. In cross-examination, DC Waddington accepted that websites and indexes can change over time, and that in relation to specific examples produced by “the Wayback machine” there were stories that had been accessible on some days which were not accessible on others. However he said that he was confident that the content of the webpage at the time when he downloaded it on 10 August 2020 would be the same as the content at the time it was accessed on Mr Thornton’s mobile, between February and April 2017. When asked why he was confident of that he replied:

*“Essentially, the link – let me just get the links up on the page – are essentially a folder path within the web page itself to get to a particular named story within a particular subsection of that area of the web page. Also the stories that were not originally available to me, I then looked on a website called archive.org. Archive.org is an American project to try and essentially keep a copy of the internet, of what is easily available to them. When you go to archive.org you can put in an old web address, an old link that does no longer exist in the live net, and it will take you to pages that are actually archived off, and give you a date and time of when those*



*pages are archived, and the links that are accessed through archive.org are on and around March/April 2017, from the dates that they were saved to archive.org. So that is the reason I do believe they are the same”.*

#### Application to admit further evidence

29. Just prior to the close of Social Work England’s case, and at the commencement of the reconvened hearing of 12 December 2021, Mr Hamlet applied to adduce further evidence. This consisted of the full content of the stories downloaded by DC Waddington on 10 August 2020 (RGW/4) and during the hearing on 18 May 2021 (RGW/18). Mr Hamlet submitted that a comparison of these two downloads would help the panel to decide whether this type of material tended to change with time, and if so whether it was likely to be similar in content to the material seen by DC Waddington at the time of his examination on 2 May 2019, which was not now available.
30. Ms Molyneux objected to the application on the basis that there was no evidence of what had been downloaded on 2 May 2019, other than the description provided by DC Waddington, which was unreliable. She argued that to ask the panel to reach conclusions about the state of the site on the basis of a comparison with the state of the site many years later, on 10 August 2020 and on 18 May 2021, was to encourage speculation.
31. The panel accepted the advice of the legal adviser. The panel decided to allow the material to be admitted. The panel concluded that if there was little change between the content of the stories online between 10 August 2020 and 18 May 2021, this was capable of supporting the suggestion that there would have been little change between those dates and 2 May 2019, which would assist Social Work England’s case. Equally, if the material downloaded on 18 May 2021 showed marked differences from the download of 10 August 2010, this would assist Mr Thornton’s case, in that it would reduce the likelihood that the content of the webpage had remained the same between the time when it was accessed, between February and April 2017, and the time when it was accessed by DC Waddington, on 2 May 2019, or first downloaded on 10 August 2010. For those reasons the panel concluded that the material was of potential relevance and that it would be fair to both parties and would be in the interests of justice to admit it.
32. Accordingly, the panel allowed the application.

#### Application to stop the hearing and recommence afresh

33. At the close of the case for Social Work England, Ms Molyneux made an application to abort the hearing, to be relisted at a future date, for a full rehearing in front of a new panel. She relied on Rule 32.

34. Ms Molyneux submitted that the way that proceedings had been conducted by Social Work England had caused continued delay, confusion and a total lack of clarity as to what documentation relating to the key exhibits, RGW/4 and RGW/18, had been received by whom, at what time, in what format, such that the Registrant had absolutely no faith that the proceedings were being conducted in a proper and fair way.
35. Ms Molyneux submitted that a reasonable observer would share the same concerns, and that the circumstances were capable of undermining public confidence in Social Work England's ability to uphold proper standards.
36. Ms Molyneux submitted that the 4 days set aside for this case in May 2021 had been subject to huge delays. Social Work England had produced statements and exhibits which were said to document material accessed by Mr Thornton's mobile phone. DC Waddington had been asked in evidence to produce one such exhibit, RGW/4, to be served on Counsel for inspection. It had taken considerable time in cross-examination to establish that in fact what had been sent to Counsel was not the original RGW/4. There were issues regarding when the material was sent, in what format, and to whom. The position became increasingly confusing. The Panel at that stage should not have seen any of RGW/4, and it was believed by the parties that they had not, although it was understood they received it during the resumed hearing in December 2021, following Social Work England's successful application to adduce a further exhibit, RGW/18, for them to compare it with. However the Chair appeared to indicate that some of the material said to be RGW/4 had already been uploaded/viewed by the Panel on an earlier date. This of itself did not cause any inherent prejudice, as it was material that has not been ruled inadmissible, but the issue was indicative of the opaque and chaotic way that material had been sent, received, formatted, grouped together, and viewed, and it was unclear on what dates and by whom material had been seen, making proceedings unfair, and unsafe.
37. Ms Molyneux argued that the way the case had been conducted had led to unfairness. It had become difficult for everyone to follow the material and have confidence that documentation had been appropriately served and received by all parties, and that everyone had the same exhibits, which was a fundamental minimum expectation for any substantive hearing.
38. Ms Molyneux submitted there was no confidence that all parties were working with the same versions of exhibits and were able to view the same content, as there was confusion around some parts of documents being only in extract form, of being in

unreadable format, and whether the Panel had seen all of DC Waddington's witness statements.

39. Ms Molyneux submitted that Mr Thornton was entitled to a fair hearing, and to know exactly what the case was against him, and have confidence in the conclusions reached. Core aspects of this had been seriously damaged and undermined. The way the case had been conducted had caused huge distress and upset to Mr Thornton. The continued delays and confusion did not provide reassurance that the issues in the case could be properly focused on.
40. Ms Molyneux submitted that in all the circumstances, it would be fair and just for the hearing to be stopped and started afresh.
41. Mr Hamlet submitted that it was unclear by what mechanism it was asserted that the hearing could be stopped and restarted. Ms Molyneux was not asking for a stay on the ground that there had been an abuse of process, nor was she suggesting that the hearing was in 'retrial territory', whereby there had been some irregularity in the determination of the issues, akin to jury tampering or a failure to reach a verdict. She was not suggesting that the Panel should recuse itself because no suggestion of bias had been, or could be, made in the current circumstances.
42. Mr Hamlet submitted that the catalyst for the application had been the realisation, by both parties, that documentation provided to the panel had not been uploaded for them in the same format as that held by the parties, and had not been uploaded in full, resulting in extracts being available to it of RGW/4 rather than the whole exhibits. Whilst that development was unwelcome and unhelpful and had caused some delay, it had not caused an injustice, and certainly not a fatal injustice, such as to necessitate a re-trial. The problem amounted to an administrative issue regarding the uploading of material to the panel's portal by the adjudication branch of Social Work England.
43. Mr Hamlet submitted that the delays were confined to one exhibit, RGW/4, and concerned the production to the parties of the correct version during the first phase of the hearing and the uploading of the correct version to the panel during the second phase of the hearing. In total, a delay had resulted of a maximum of 2 days in obtaining and producing that material.
44. Mr Hamlet submitted that the only issue was whether the trial could proceed on a fair footing. The test was not whether Mr Thornton had no faith in the fairness of the proceedings, or was frustrated by the delays, but whether on an objective basis a fair trial could not be held. The reality was that this had not caused an injustice, nor had it

raised, objectively, a perception of injustice, because it concerned an administrative issue that could and should be resolved.

45. Mr Hamlet submitted that the proportionate and fair response was to allow Social Work England a reasonable opportunity to resolve the issue and for the panel to continue with the hearing.
46. The legal adviser reminded the panel of Rule 32(a) of the Social Work England Fitness to Practice Rules 2019 which states: *"Subject to Rule 32(c), the adjudicators ...may regulate their own procedures and must conduct the hearing.... in the manner they consider fair"*.
47. The legal adviser advised the panel to ask, firstly, whether the way in which the proceedings had progressed, on an objective consideration of the matter, had prejudiced Mr Thornton such as to cause him potential unfairness. Secondly, if the panel concluded that potential unfairness had been caused to Mr Thornton, the panel should ask whether that was capable of remedy in the course of the current proceedings by taking further measures. Thirdly, if the panel concluded that potential unfairness had been caused to Mr Thornton, which could not be remedied in the current hearing by taking further measures, the panel should ask whether the unfairness was of such severity that Mr Thornton was unable receive a fair hearing within the context of the current hearing. If the panel concluded that stage had been reached, the panel had the power to order a rehearing in accordance with Mr Thornton's fundamental right to a fair hearing. Whether that stage had in fact been reached in the current context was a matter for the panel to decide.
48. The panel concluded that whilst it was clearly very unfortunate that delays had been incurred in the course of the hearing, for which no blame lay at Mr Thornton's door, it could not be said that any unfairness had been incurred in the course of the hearing, and furthermore any difficulties that had been encountered were capable of remedy. The panel agreed with the submissions made by Mr Hamlet. The difficulties that had occurred in the course of the hearing amounted to administrative issues and these were capable of being solved. There was nothing to necessitate a stay of proceedings. There had been no procedural error. There were no grounds for suggesting that the panel should recuse itself.
49. In considering its powers under Rule 32(a) the panel considered that it was clearly very unfortunate that Mr Thornton had had to wait so long and the hearing had not run as smoothly as it should. However it could not be said that the administrative errors that had occurred hitherto were such that Mr Thornton was unable to receive a fair hearing.

### Application to stay the proceedings as an Abuse of Process

50. The case was originally listed for a four day final hearing between 17 and 20 May 2021. A second listing of five days took place between 13 and 17 December 2021. In that time Social Work England closed its case. A third listing of seven days took place between 9 and 17 January 2023. At the commencement of the third listing Ms Molyneux gave notice that she would be arguing abuse of process.
51. Ms Puri contested the application.
52. The substantive hearing commenced on 17 May 2021. On the second day of the hearing, following cross-examination about the content of the sex stories, the panel asked to see the stories. DC Waddington provided a further statement producing a download of the stories. This was understood by the recipients to be the version that he downloaded from Mr Thornton's phone in August 2020. However DC Waddington said in further cross-examination that he had not provided the copy of the stories that he downloaded then, as that was illegible due to the formatting, rather he had conducted a fresh download mid-hearing.
53. The hearing was adjourned overnight and a further statement was provided, exhibiting both RGW/4 and RGW/18-5-21, namely the original download and the subsequent download. The hearing then adjourned to 13 December 2021, when Social Work England applied to admit RGW/18-5-21 into evidence, which was granted. However discrepancies in the documentation made available to the panel and counsel came to light and therefore time was given to remedy this, culminating in placing documentation onto One Drive so that the panel and counsel could access the material in the same format. The hearing culminated with the panel making the following directions for the resuming hearing;
  - (i) The hearing to be relisted for a further 7 days; preferably in one tranche but if this proves impossible, 2 blocks of 4 + 3 days or 5 + 2 days
  - (ii) The hearing to be listed no earlier than the commencement of April 2022.
  - (iii) The date to be fixed to facilitate the attendance of Mr Thornton and Ms Molyneux. Mr Hamlet's attendance is very desirable but not essential.
  - (iv) All documentation to be supplied no later than 14 days prior to the commencement of the resuming hearing, in the same accessible format that was eventually supplied to the panel on 17 December 2021.

(v) Social Work England to ensure that all the documentation is supplied to Mr Thornton in a suitable format at least 14 days prior to the resuming hearing, to include RGW/4 in full.

(vi) The hearing to be continued remotely.

54. The hearing adjourned again to 9 January 2023 but did not recommence until 11 January 2023 as documentation emanating from the December 2021 hearing had not been served in paper form on Mr Thornton in contravention of the case management direction made at the conclusion of the December 2021 hearing. This led to a request for 2 days to enable Mr Thornton to receive it, which was not opposed by Social Work England. Ms Molyneux gave notice that she intended to apply for a stay on the grounds that the proceedings amounted to an abuse of process. The remainder of the January 2023 listing was occupied with that application together with a second application made by Ms Molyneux to the effect that there was no case for Mr Thornton to answer on Charge 1(b).

#### Abuse of Process submissions on behalf of Mr Thornton

55. Ms Molyneux provided the panel with a written skeleton argument which included a detailed analysis of the law on abuse of process.
56. Ms Molyneux submitted that when the case was listed in May 2021 DC Waddington represented in evidence that the stories produced by him at the request of the panel was a download of the stories and indexes found on Mr Thornton's mobile phone at the time of his arrest in 2019, exactly as they appeared during the online search subsequently conducted by DC Waddington. When the panel asked for a copy of those stories, and an exhibit was then produced for both parties to view, it was effectively being represented by DC Waddington that this was the original, RGW/4, but upon close scrutiny this was obviously not the case because, for example, the indexes contained links to material linked to COVID 19 which had not existed at the time of his original search.
57. The original listing for the case had been for one week, in May 2021, but due to these issues the case went part-heard until December 2021.
58. When the resuming hearing was listed in December 2021, there were further issues in that Social Work England had failed to ensure that all parties had access to the documents/exhibits in the same format and there was a concern that different versions were in existence and being circulated. This caused distress to Mr Thornton. Ms Molyneux submitted that due to the administrative failings of Social Work England almost the entire listing time was consumed with resolving these issues. Mr Thornton

had encountered difficulties in accessing the documentation electronically and the December 2021 listing culminated with the panel making a series of directions regarding service of all case documents on Mr Thornton in paper form ahead of any resuming dates.

59. The resuming hearing was listed to recommence on 9 January 2023, but the documentation directed by the panel was only sent out to Mr Thornton on Thursday 5 January 2023 which Mr Thornton was not able to collect from the post office prior to the third day of the resuming hearing, Wednesday 11 January 2023. The consequence of this was that if the hearing had continued it would have had to adjourn part-heard once more. An abuse of process argument was then mounted.
60. Ms Molyneux submitted that there are two categories of common law abuse of process: Category 1, where the defendant would not receive a fair trial, and Category 2, where a stay is necessary to protect the integrity of the judicial system. She confined her submissions to Category 2, in relation to which, she submitted, it was not necessary to establish serious prejudice to Mr Thornton. She submitted that Article 6 of the European Convention on Human Rights, which provides the right to a trial within a reasonable time, had been breached. Ms Molyneux based her submission on (a) delay, caused in part by poor/oppressive administration on the part of Social Work England and (b) possible bad faith on the part of DC Waddington.
61. In arguing delay, Ms Molyneux submitted that when the hearing was first listed on 17 May 2021 there was a delay whilst it was established that both Counsel appeared to have different numbered/versions of the evidence in the case. When the hearing was relisted in December 2021, Social Work England sent the exhibits to the parties with different formatting/indexing, which led to an application to abort the proceedings and start afresh, which was refused. Mr Thornton had been reliant on paper copies of the documentation but neither the transcripts of the hearing nor RGW/4 were served on Mr Thornton until 5 January 2023. The panel had directed this documentation to have been sent no later than 14 days before the resuming hearing, and whilst it was accepted that the documentation was served in electronic form on his legal representatives, Mr Thornton had the right to expect that documentation would also be served on him in compliance with the direction of the panel. Ms Molyneux submitted that Mr Thornton had had to wait 2 ½ years since the commencement of the hearing and this was compounded by the fact that the regulator had been aware of the case as early as 2018 and yet had failed to deal with the matter at a substantive hearing until some 3 years later.
62. In arguing bad faith, Ms Molyneux argued that DC Waddington had been untruthful and had sought to mislead the panel, firstly, by claiming to have made exhibit RGW/4, which

he then accepted he had no trace of on his computer, and then claimed to have sent it on to Capsticks, when in fact no such exhibit was ever received. He then claimed in evidence that he was producing RGW/4, in reformatted form, but was then forced to admit that the document he produced was the product of a search he had undertaken the previous evening, 18 May 2021, using the same link for the stories complained of. Ms Molyneux submitted that he exaggerated the seriousness of the case when speaking to Mr Thornton's employers which resulted in his dismissal. Ms Molyneux also submitted that whereas DC Waddington had presented RGW/4 as containing the same material that was read by Mr Thornton at the time of the commission of the allegation, it was then accepted by DC Waddington that websites and indexes can change over time, and it was demonstrated with specific examples of the 'Wayback machine' that stories that had been accessible on some dates were not accessible on others, that there was no way to determine the exact content of the sites and indexes unless the Wayback had happened to make a record on that specific date, and that content could be taken down and put back up any number of times, and edited.

#### Abuse of Process submissions on behalf of Social Work England

63. Ms Puri also provided the panel with a written skeleton argument which included an analysis of the law on abuse.
64. In relation to the criticism that DC Waddington had conducted his investigation in bad faith and with the intention to deliberately mislead, Ms Puri submitted that Social Work England continued to rely on his evidence as evidence of truth given in good faith. She submitted it would be for the panel to assess his evidence, and consider Counsel's respective submissions, in determining what if any weight to attach to it in reaching a decision on the facts.
65. In meeting the submissions regarding delay, Ms Puri argued that the delays in concluding the case did not, in the main, lie at the fault of Social Work England as the prosecuting authority. Notwithstanding the delays, there was no serious prejudice identified in the final hearing now proceeding to its conclusion. A stay could not be justified on this ground. The continuation of the final hearing would not infringe upon the Social Worker's Article 6 rights.
66. Ms Puri submitted that hearing days had been lost in whole or in part through:
  - a. The request to produce the 'sex stories' and the issues in DC Waddington's producing RGW/18-5-21 instead of RGW/4. The resulting extension of his evidence, by both Counsel, could not be criticised [1 day]
  - b. The discovery, following the application to admit, of the formatting and version



discrepancies between documents held by the Panel on 'BundleDocs' and by Counsel, and the time taken to rectify this by establishing the OneDrive [2 days, exacerbated by an 'early finish' as Mr Thornton's evidence could not go part-heard].

- c. Social Work England's partial failure to comply with Direction 5, by not having provided the Mr Thornton with hard copies of all transcripts and the RGW exhibits in good time ahead of the resumed hearing on 9 January 2023 [2 days agreed adjournment]
  - d. Drafting of further skeleton arguments [2 days].
67. Ms Puri submitted that a stay of proceedings on grounds of delay is rare. The delay must be exceptional and accompanied by very serious prejudice to the accused that cannot be remedied within the process. She submitted that no such prejudice existed in this case. There was no question of a loss of evidence or fading of memory. Social Work England closed its case on the facts on 17 December 2021, with the contents of the evidence against Mr Thornton being fully captured between the transcripts and the hearing documents. All defects relating to documents had been now been remedied such that evidence may have resumed on 11 January 2023, but for these applications.
68. Ms Puri submitted that the Panel must balance the interests of Mr Thornton, and any suggestion of unfairness or prejudice, against those of the regulator in upholding the overarching objective, and the undoubtedly important and countervailing public interest in ensuring allegations of a serious nature are determined at a public hearing.
69. Ms Puri submitted that the allegations in this case, of a practising social worker discussing, viewing or exchanging images and/or stories of sexual activity with children, with sexual motivations, are extremely serious and fundamentally incompatible with basic tenets of the social work profession. The proper protection of both public safety and the public interest in maintaining confidence in the profession requires fitness to practise proceedings such as these, in the absence of exceptional and substantiated reason, to be permitted to continue to final determination.
70. Ms Puri did not accept that the type of difficulties in accessing documents that had plagued the case were capable of amounting to incurable prejudice such that Mr Thornton could no longer be fairly tried. She submitted that any prejudice incurred had on the contrary been cured as confirmed by the agreement of both Counsel and all Panel members on 17 December 2021 that identical documentation could now be suitably accessed via the OneDrive.

71. Ms Puri submitted that the hearing bundles were served on Mr Thornton's representatives and panel in advance of the first listing in May 2021 in compliance with directions. A hard copy was provided to Mr Thornton on 12 May 2021.
72. Ms Puri submitted that during the course of cross-examination by DC Waddington on Day 2, questions were asked on behalf of the Social Worker regarding the content of the 'sex stories' that form the subject of Charge 2. Social Work England had not intended to rely on the content of these stories as part of its case and the downloads had never been provided to Social Work England. The question having been raised however, the stories were located and served overnight with minimal delay to proceedings (First supplementary MG11 and what was believed to be RGW/4 served electronically).
73. Ms Puri submitted that the following confusion, catalysed by DC Waddington's knowledge of the poor formatting of the original RGW/4, was resolved again without delay on Day 3 (Second supplementary MG11 exhibiting RGW18-5-21, and actual RGW/4, served electronically).
74. Ms Puri submitted that the issues that emerged during the December 2021 listing in relation to the panel having been given different versions of the new exhibits caused unwelcome and unhelpful delay. These were technical, administrative issues, in part reflective of the perils of remote working. There was no basis on which to now suggest they were the result of any deliberate action, leave alone bad faith, by Social Work England. On the contrary, it was apparent throughout the transcripts of Days 6, 8 and 9 that Mr Hamlet, Counsel on behalf of Social Work England, made every effort to investigate the discrepancies in documentation as soon as they came to light, and the cause of them, and, ultimately, to resolve these issues by working with the Hearings Officers to create the OneDrive/Sharepoint.
75. Ms Puri submitted that the first time that an issue was raised with the Social Worker accessing documents electronically whilst also using MS Teams was on Day 8 of this hearing [Transcript p7]. Discussion was had in relation to provision of hard copies of all material other than RGW/4, and Mr Hamlet on behalf of Social Work England acknowledged that he had sympathy for this request [Transcript p8 G].
76. Ms Puri submitted that it was evident from the OneDrive itself that all relevant material, barring the December 2021 transcripts, was uploaded on 16 December 2021. On Day 9, Mr Hamlet confirmed that Counsel for the Social Worker, and all members of the panel, had electronic access to the exact same materials via the OneDrive. The RGW/4 exhibit, which was only readable electronically, was confirmed to be in the correct format such

that when zoomed in it was legible. Mr Thornton's solicitor was also given access to the OneDrive on 16/17 December 2021.

77. Ms Puri submitted that the December 2021 transcripts were shared via BundleDocs with the Social Worker's representatives on 21 December 2022. The OneDrive link was also recirculated to Mr Thornton, his solicitor, and Counsel, on this date.
78. Ms Puri accepted that hard copies of the two supplementary RGW MG11s, Exhibit RGW/18-5-21, and the transcripts, were not provided to Mr Thornton at least 14 days prior to the hearing. However these documents were all made available on the OneDrive link, in the required time, as the agreed single access point for all documentation in this case by all parties. There was no correspondence between Social Work England and Mr Thornton's representatives in relation to the provision of hard copies, or otherwise accessing material, during 2022. A request was received for hard copies of the transcripts and the supplemental service bundle on 5 January 2023. The same day, hard copies were posted via special delivery.
79. Ms Puri submitted that any prejudice to Mr Thornton is limited, and had proven capable of full remedy within these proceedings:
  - a. there has been no new evidence, meaning material relied upon by Social Work England in bringing its case, since May 2021. All material not within the original hearing bundles was confirmed as electronically accessible to Mr Thornton's Counsel on 17 December 2021 (and provided in different formats prior to that).
  - b. hearing transcripts, as prepared and circulated by the adjudications arm of Social Work England, are not evidence but provided as a useful memory aid for the Social Worker, who, together with his Counsel, were physically present during the earlier stages of these proceedings. Two further and short bundles dealing exclusively with service were prepared as a matter of course, but not relied upon given Mr Thornton's attendance.
  - c. an agreed adjournment of two days to facilitate the collection of and review of hard copies of the RGW evidence and transcripts, was sufficient to remedy any prejudice caused by Social Work England's failure to comply with the case management direction.
  - d. the remaining five days would likely have sufficient to enable completion of the live evidence and determination of the facts in this case, a significant milestone.

80. Ms Puri accepted that the administrative delays are unfortunate and unwelcomed by all, and the impact on the Social Worker is recognised. However she submitted that the circumstances fell far short of the required incurable prejudice, caused by established prosecutorial misconduct, that renders the proceedings so unfair as to merit taking the very exceptional step of granting a stay.

### Legal Advice on Abuse of Process

81. The legal adviser provided extensive advice on the criteria relevant to an abuse of process application. This included the following:
82. An abuse of process was defined in the case of *Connelly v DPP* [1964] AC 1253 as:  
*“...something so unfair and wrong that the court should not allow a prosecutor to proceed with what is in all other respects a regular proceeding.”*
83. The case of *R v Maxwell* [2011] 1 WLR 1837 confirmed that there are two categories of case where the court has the power to stay proceedings, namely:
1. *“(i) where it will be impossible to give the accused a fair trial and*
  2. *(ii) where it offends the courts sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.*
  3. *In the first Category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second Category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court’s sense of justice and propriety or will undermine public confidence in the criminal justice system and bring it into disrepute”.*
84. Ms Molyneux had made her application on the basis that this was a second Category case.
85. The second Category is rarely engaged in regulatory proceedings since it contemplates exceptional impropriety by the prosecuting body and, characteristically, impropriety originating from the state. However there are exceptions to that.
86. Examples of the first Category, are: where an exhibit that is vital to the defence has been lost; where there has been such prejudicial publicity in relation to the matter that a fair trial is not possible; or where there has been such delay that it is no longer possible to have a fair trial. A stay under this head will not be granted where the trial process is itself equipped to deal with the problem. The authorities indicate that Category 1 abuse arguments should never be made when there are other ways of achieving a fair hearing

and where there is no evidence of prejudice to the defendant or registrant. It has been said that such arguments should not be put forward as mere embroidery of a case that could be advanced equally well without them, as to do so distorts the trial process and wastes court time.

87. Examples of the second Category are found where the prosecution has manipulated or misused the process of the court, or taken an unfair advantage of a technicality. It applies to a number of distinct kinds of complaints, including decisions by the prosecuting authorities in relation to the institution or continuation of proceedings; the manipulation or misuse of the process of the court so as to deprive the defendant or registrant of a protection provided by the law or to take unfair advantage of a technicality; or the prosecuting authority going back on a promise.
88. In regulatory proceedings, the most common ground advanced in abuse of process applications is that of delay. This argument is usually made both under the common law and under Article 6(1) of the European Convention on Human Rights. Article 6(1) provides the right to a trial within a reasonable time.
89. The common law principles concerning Category 1 cases of unjustifiable delay are set out in the leading case of *Att Gen's Reference (No.1 of 1990)* [1992] Q.B. 630 (CA), as restated, taking into account subsequent authorities in *R. v S* [2006] EWCA Crim. 756 (CA). Those principles may be summarised as follows:
  - (1) even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;
  - (2) where there is no fault on the part of the complainant or the prosecution, it will be very rare for a stay to be granted;
  - (3) no stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held;
  - (4) on the issue of possible serious prejudice, there is a power to regulate the admissibility of evidence, and the trial process itself should ensure that all relevant factual issues arising from the delay will be considered;
  - (5) if, having considered all these factors, it is assessed that a fair trial will be possible, a stay should not be granted.
90. Those principles were reaffirmed by the Court of Appeal in *R. v F(S)* [2011] EWCA Crim. 1844. where the court stated that when abuse of process submissions on the grounds of delay are advanced in Category 1 cases, reference should no longer be made to any decisions of the Court of Appeal other than *Att Gen's Reference (No.1 of 1990)*, *R. v S* and *R v F(S)*. The court summarised the effect of those authorities in these terms:

*“An application to stay for abuse of process on the grounds of delay must be determined in accordance with Attorney-General’s Reference(No.1) of 1990. It cannot succeed unless, exceptionally, a fair trial is no longer possible owing to prejudice to the defendant occasioned by the delay which cannot fairly be addressed in the normal trial process. The presence or absence of explanation or justification for the delay is relevant only insofar as it bears on that question...”*

91. The period for consideration under Article 6(1) is the time during which the administrative and judicial authorities are dealing with the case. Time begins to run from the moment that the individual is “officially notified” or “substantially affected” by proceedings against him or her. In regulatory proceedings, time runs from the date of the notification by the regulator to the practitioner of the general terms of the allegations to be considered. In the current instance time begins to run for the purposes of Article 6(1) on 5 June 2019, when Mr Thornton was notified of the allegation by the HCPC. For the purposes of Article 6(1) it ordinarily runs up until the commencement of the substantive hearing.
92. In *Att Gen’s Reference (No.2 of 2001)* [2004] 2 A.C. 72. Lord Bingham held that:  
*“If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant’s Convention right under Article 6(1). For such a breach there must be afforded [an appropriate remedy]. . . it will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. The prosecutor and the court do not act incompatibly with the defendant’s Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since the breach consists in the delay which has accrued and not in the prospective hearing.”*
93. Therefore, whilst it is not necessary to show prejudice to establish a breach of the right to a trial within a reasonable time under Article 6, it is necessary to show that it is not possible to have a fair trial, or that it would not be fair to try the accused/registrant, if the proceedings are to be stayed as an abuse. Lord Bingham stated that there may be cases where the delay is of such an order, or where the prosecutor’s breach of professional duty is such, as to make it unfair that the proceedings should continue, but such cases will be very exceptional and a stay will never be an appropriate remedy if a lesser remedy would adequately vindicate the applicant’s Convention rights.
94. Although the vast majority of applications to stay proceedings, and in particular most

delay cases, have been found to fall under Category 1, there are some relevant important categories of challenge other than delay cases that fall under Category 2. In addition, there are exceptional cases in which delay cases may fall under Category 2. Case law on Category 2 indicates that:

(a) The public interest that lies in ensuring that serious cases are heard should be weighed against the need to maintain public confidence in the criminal justice system/regulatory system, (b) That exercise should take into account “...*the seriousness of any violation of the defendant’s (or even a third party’s) rights; whether the police have acted in bad faith or maliciously, or with an improper motive; whether the misconduct was committed in circumstances of urgency, emergency or necessity; the availability or otherwise of a direct sanction against the person(s) responsible for the misconduct; and the seriousness of the offence with which the defendant is charged.*’ It follows that the issue of prejudice is highly relevant even though it is not a prerequisite; (c) the application of the “but-for” test (i.e. the question of whether critical evidence would have been available but for the prosecutorial misconduct in question) will not always or even in most cases necessarily determine whether a stay should be granted; (d) the proper focus is not on the unfairness to the accused but rather whether, as a result of the prosecutorial misconduct, the court’s sense of justice and propriety is offended or public confidence in the criminal justice system would be undermined by the hearing.

95. The considerations relevant to professional regulation cases will be different or, at least, weigh differently to those in criminal cases, in part because there is a strong countervailing public interest in the purpose of regulatory proceedings. In *Council for the Regulation of Health Care Professionals v General Medical Council and Saluja* [2006] EWHC 2784 (Admin); [2007] 1 W.L.R. 3094, which concerned a Category 2 abuse of process application, the court considered the question of whether proceedings should be stayed where the GMC sought to rely upon evidence implicating a GP obtained by a journalist posing as a patient. The judge allowed the appeal against the panel’s decision to stay the proceedings on the basis: first, that there was an important distinction where the state was not the prosecutor and, second, that the panel should have had regard in the balancing exercise to “*the important elements of public protection, the upholding of proper professional standards and public confidence in the profession*”. The judge also emphasised the very exceptional nature of a Category 2 stay.
96. In *Att Gen’s Reference (No.2 of 2001)* [2004] 2 A.C. 72, Lord Bingham recognised that there may be exceptional cases where the delay is of such an order that proceedings should be stayed under Category 2 of the common law.
97. Unlike Category 1 common law challenges, prejudice is not central to Category 2 common law abuse arguments. The delay and/or the offensiveness of the prosecutor’s conduct



must be exceptional to reach the Category 2 threshold for a stay on the grounds of delay. Although prejudice is not a prerequisite, it is however, a relevant and important consideration, in that its absence tends to militate against a finding that the balancing exercise requires a stay.

98. Category 2 common law challenges, other than delay, have been considered in regulatory cases include the following: (a) deployment by the regulator of material obtained through acts by a third party alleged to be improper; (b) going back on a promise not to prosecute; (c) cross-contamination of evidence by improper disclosure by a regulator to complainants. However that is not an exhaustive list and caselaw has emphasised that this area of law is case specific and each application must be looked at on its individual merit.
99. In relation to the complaint regarding delay the panel should first approach its task by asking whether there has been a delay from the time of the alleged misconduct (the common law test) or a failure to have a trial within a reasonable time (within the Article 6 time frame, namely from the date when Mr Thornton was notified of the allegation on 5 June 2019). In considering whether there has been a breach of Article 6, Lord Bingham described the approach to be adopted by the courts when considering delay in *Dyer v Watson* [2004] 1 A.C. 379 (PC), in the context of an argument that Article 6(1) has been breached by reason of delay, as follows:

*“The first step is to consider the period of time that has elapsed. Unless that period is one which, on its face and without more, gives ground for real concern it is almost certainly unnecessary to go further, since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary . . . to explain and justify any lapse of time which appears to be excessive.”*

100. If the panel decided that there has been delay of a kind that traverses that “first step” or a failure to hold a hearing within a reasonable time, in other words that there has been a breach of Article 6, the next stage is to determine whether there has been an abuse of process applying the principles covered by this advice.

#### Decision on Abuse of Process

101. The panel considered the submissions of both parties with care. It accepted the advice of the legal adviser.



102. The panel first considered whether there was an abuse of process by reason of bad faith or misconduct on the part of DC Waddington, as had been suggested by Ms Molyneux.
103. The panel consulted the transcripts and confirmed the factual scenario set out by Counsel. The panel confirmed that it had been at the panel's request that attempts had been made to obtain the stories in the format that would have been in existence at the time of the allegation. The panel took account of the sequence of events that then followed, including that the production of copies of the stories by DC Waddington to Capsticks which, it transpired, were not the product of a download completed by him at the time of his investigation but rather a result of a download conducted by him in the course of the hearing after the panel had requested sight of the stories. Whilst reaching no decision on the credibility of DC Waddington, which would be relevant to the panel's consideration of the facts at the conclusion of the fact finding stage, the panel took account of the suggestion that DC Waddington was acting in bad faith in the manner set out in Ms Molyneux's submissions. In so doing, the asked itself whether, in any event, DC Waddington's behaviour, as alleged by Ms Molyneux, would mean that Mr Thornton could not have a fair hearing, and/or whether continuing with Mr Thornton's hearing would offend the integrity of the fitness to practise system.
104. The panel took account of the fact that due to the protracted efforts of all parties, the Wayback machine was deployed to enable the panel to see the stories in their original state. The panel concluded from this that there was therefore no prejudice to Mr Thornton in this regard, and he would receive a fair hearing as the problem had been remedied. Any argument under Category 1 abuse therefore failed.
105. In considering Category 2, as urged upon the panel by Ms Molyneux, the panel bore in mind that the overarching objective of a regulator in exercising its functions is the protection of the public, which includes the promotion and maintenance of proper professional standards and public confidence in registrants. The allegations that Mr Thornton, a social worker, had engaged in discussions resulting to sexual activity involving children and viewed indecent images of children via an online forum, and had accessed a sex story website on which he had visited stories that depicted sexual activity involving children, were extremely serious and merited exploration in open hearing. The panel balanced this against the suggestion that DC Waddington had acted with impropriety in the manner alleged, and it was the judgement of the panel that the protection of the integrity of the regulatory system did not require a stay in the circumstances of this case, in particular in light of the seriousness of the allegation and the purpose of regulatory proceedings, namely the protection of the public and the wider public interest.

106. The panel then considered the issue of delay, firstly in the context of Article 6 and then in the context of the common law.
107. In considering Article 6, the panel understood that time ran from the moment when Mr Thornton was first alerted to the allegation by the HCPC, on 5 June 2019, until the commencement of the proceedings, on 17 May 2021. The panel did not regard the period of 2 years to be in any way exceptional in the context of regulatory proceedings, regrettable though that may be. Consequently it was the judgement of the panel that the delay had not resulted in an abuse of process by reason of any breach of Article 6.
108. In considering the common law, the panel understood that time ran from the moment of the allegations, in January 2011 for Allegation 1 and early 2017 for Allegation 2, up to the stage that had currently been reached in this hearing. However the panel took account of the fact that it was not until 14 May 2019 that the HCPC was informed of the allegations by the police, and therefore could not have acted any sooner. In those circumstances, in relation to any pre-hearing delay, the panel applied the same reasoning to the common law situation as it had done to the issue of whether there had been an Article 6 breach by reason of delay, and concluded that a delay of 2 years did not reach the high threshold required to merit a stay.
109. In considering whether the delay that had resulted in the course of the hearing itself fell within Category 1 abuse, the panel concluded that it did not. There had been no prejudice to Mr Thornton in that all the evidence relied on by Social Work England had been heard in the course of the four days commencing 17 May 2021 and was electronic in nature and was not affected by fading memories. There were transcripts available. Further, the panel concluded that part of the delay was caused by taking care to remedy the problem that had been created by producing the stories in the wrong timeframe. Time, and therefore delay, was required to remedy those problems, which had now been achieved. The panel now had all the correct material with which to conduct the hearing. In those circumstances it was the judgement of the panel that the delay did not bring the case into a Category 1 abuse situation in that it could not be said that Mr Thornton would not receive a fair trial.
110. Lastly it was the judgement of the panel that the delay had not resulted in a Category 2 abuse of process in that the integrity of the regulatory system had not been adversely affected by reason for the delay in that whilst the delay had been frustrating for all and highly regrettable it had not, in the panel's judgement, been exceptional and did not meet the high threshold required for a stay.

### Submission of No Case to Answer on behalf of Mr Thornton

111. At the resumption of the hearing in January 2023 Ms Molyneux submitted that there was no case for Mr Thornton to answer in relation to Charge 1(b). Ms Molyneux relied on the first limb of *Galbraith*.
112. Ms Molyneux submitted that the charge relied on an inference being drawn from the conversations between the 3 individuals participating in the chat logs exhibited at RW/4. She submitted that there is no evidence that it was Mr Thornton participating in the chat, as opposed to another individual, other than the fact that the email address was linked with him.
113. Ms Molyneux submitted that in the absence of the actual images themselves this charge should go no further as there was no evidence of any images and no evidence that any individuals were in fact underage. This needed to be seen in the light of an abundance of pornographic material that was found on Mr Thornton's hard drive.
114. Ms Molyneux submitted that it would be wholly unsafe for inferences to be drawn from these chat logs which are incomplete, which could contextually be highly relevant to the overall meaning/understanding of what may or may not have been being shared.
115. Ms Molyneux submitted that the panel should take account of the fact that Mr Thornton is a man of good character, and secondly, that the police analysed the devices seized from his home and concluded that there were no indecent images of children found on any device, nor were there search terms, internet history or other indication that he had been looking for indecent images of children; there was no chat relating children whereas there was sexual chat with adults.
116. Ms Molyneux submitted that the fact that there was a large amount of "normal" pornographic material found on a hard drive taken from his home, made it even more dangerous and unfounded to make any inferences that on this one occasion Mr Thornton was viewing and participating possibly in the sharing of indecent images.
117. Ms Molyneux relied on a passage in DC Waddington's evidence when he said that it was not possible to prove what was actually exchanged.

### Social Work England's submissions in relation to no case to answer

118. Ms Puri submitted that DC Waddington's evidence as set out in his MG11 dated 20 August 2020, and adopted at this hearing made clear that:

- No indecent images of children were found on any of the devices seized from Mr Thornton's address on 23 April 2019
- The download of the chat log provided by Cheshire Police, does not include any image files as these were not saved down
- Mr Thornton was not prosecuted, because there was insufficient evidence to establish distribution or possession of indecent images to the criminal standard.

119. Ms Puri submitted that there was a strong inference that Mr Thornton participated in the chat in 2011, based upon:

- The attribution of the 'thunderball.thornton@talktalk.net' email to him by TalkTalk
- His admissions in interview that he used this email address between 2008 to 2015 [MT/1, p96-87 ], including on MSN messenger to talk about sex, including teens above 18 [p102]
- Inconsistencies in the explanation now put forward that the email account must have been hacked, including evidence of continued use of the account by the Mr Thornton until 2017 [p49] and his failure to mention such hacking on arrest and when specifically asked about the timing of the chat in interview [105-107]

120. Ms Puri submitted that the content of the chat log, on its face, demonstrates that the three participants are exchanging and/or viewing indecent images of children. The messages include:

At 21.23.03

|              |                                      |
|--------------|--------------------------------------|
| Other person | "Ok send me young and old no limits" |
| Other person | "That OK"                            |
| Thunderball  | "Yeh pal"                            |
| Other person | "Not to young then"                  |
| Thunderball  | "Not at all"                         |

At 21.44.25

|               |                         |
|---------------|-------------------------|
| Other person  | "Wot u got"             |
| Thunderball   | "About 14/15"           |
| Other person: | "any time you have cam" |
| Thunderball:  | "How yngs she?"         |
| Other person: | "no can we can meet"    |
| Other person: | "13"                    |

At 22.39.40

Thunderball: "Hot vid how old"  
 Other: "I think 16"  
 Thunderball: "I'd agree luv that her tits are so big and pert so dont drop when she takes her bra off"  
 Other: "I'm getting hard now"  
 Thunderball: "Me too"  
 Thunderball: "u"  
 Thunderball: "You've already sent those pal"

121. Ms Puri submitted that the overwhelming inference from these messages is that indecent images, i.e., sexual images of children, are being sent and discussed between the group for pleasure. She submitted that the fact that no actual images had been recovered did not negate this evidence and limb one of *Galbraith* – that there is no evidence – could not therefore be engaged.

#### Legal advice in relation to no case to answer

122. The legal adviser advised that the regulatory case of *Sharaf v GMC* [2013] EWHC 332 confirmed that the leading criminal case of *R v Galbraith* [1981] 1 WLR 1039 provides the correct test for a submission of no case to answer in the context of regulatory proceedings. Application of that test would need to take into account the different standard of proof which applies to regulatory proceedings, namely the civil standard rather than the criminal standard.

123. The test in *Galbraith* is as follows:

*"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*

*(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.*

*Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*

*Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury, and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury".*

124. The regulatory case of *Sharaf v GMC* [2013] EWHC 332 broadly speaking adopted that test whilst clarifying that in the context of regulatory proceedings the test is whether a

tribunal *could* on balance of probability find the facts proved, not whether they *would* do so.

125. The legal adviser advised that if the panel concluded that there was simply no evidence with which to prove Charge 1(b), the panel should decide that there is no case for Mr Thornton to answer in relation to it.
126. The legal adviser advised that if the panel concluded that there is there evidence in relation to Charge 1(b) upon which a properly directed panel could find the facts proved, then the panel should proceed to hear the defence case. A panel properly advised, would be reminded at the fact finding stage, that it is for Social Work England to prove the allegation of fact, and that the relevant standard of proof is the civil standard, namely the balance of probabilities. Such a panel would also be advised that whilst it is clearly wrong to speculate, nevertheless a panel is entitled to draw reasonable inferences on the basis of the evidence placed before it.

#### Decision on no case to answer

127. The panel considered the submissions of both parties. It accepted the advice of the legal adviser.
128. After that careful consideration, the panel agreed with the submissions put forward by Ms Puri.
129. Whilst the panel accepted that no images had been found, the panel agreed that a reasonable inference could be drawn that Mr Thornton had exchanged and/or viewed indecent images of children based on the factors relied on by Ms Puri in her submissions as summarised above.
130. It followed that the panel concluded that a panel, properly advised, could find the facts proved.
131. Accordingly the panel dismissed the application of no case to answer on Charge 1(b).
132. The hearing was then unable to resume earlier than the end of September 2023 due to the non-availability of Ms Molyneux.

#### Mr Thornton's case

133. Mr Thornton gave evidence.

134. In relation to Charge 1, Mr Thornton accepted that the Thunderball address was his, but claimed that his computer must have been hacked by an unknown person as he was clear that it was not he who had engaged in the discussions in the chat log.
135. He said that at the time of the chat log he had only just moved into a new house and tradespeople were coming in and out of the premises, for example to install a new boiler and heating system, new bathroom and new windows. He said that he also had other visitors. He said that his computer at that time was a laptop which he kept in the back room, next to the bathroom. He said that he kept a note of his passwords on sticky notes which he left in the same room and that these could have been accessed by anyone seeking to hack his computer.
136. He said he used MSN on the odd occasion to keep in touch with friends and to access dating and sports sites.
137. He said that his email address and Facebook account had been hacked on approximately three occasions in or around 2011, and that he had approached his provider to remove the individuals hacking his email address, so that he could use his email address once again.
138. In relation to Charge 2, Mr Thornton accepted that he must have entered the 9 sex story links that form the subject of the charge, but claimed that he would have done so with the aim of accessing adult sex material and not material relating to children. He said that he would click on the most recent link that came up and would remain on that link for a matter of seconds before then scrolling on to the next link, and the next, in his search for adult material. He said that he was looking for adult pornography, which he used as a coping mechanism for the stresses of his job as a social worker.
139. Mr Thornton said that when he was interviewed by the police he had been given little notice and was not legally represented. For that reason he did not mention some of the points that were pertinent to his defence, and may not have expressed himself as clearly as he would have wished.
140. Mr Thornton claimed that he told DC Waddington at the time of his arrest that his computer had been hacked, that his credit cards had been cloned and that his passport had gone missing. He said that he reported the loss of his passport at the time it went missing, and that he had contacted Facebook, who had not responded, and contacted his internet provider, who had stated that as his accounts were dormant they were unable to access any of the relevant information, hence he was unable to provide any further evidence in support of his defence.

### Submissions on the facts on behalf of SWE

141. In relation to Charge 1(a), Ms Tai submitted that it was more likely than not that it was Mr Thornton who entered the chat room on 1 January 2011, as opposed to someone hacking his email address, for the following reasons:
- Mr Thornton's admission that the Thunderball address was his;
  - Mr Thornton's admission that he used the Thunderball address between 2008 and 2015, including on MSN messenger, to talk about sex, including teens aged 18 or 19;
  - Mr Thornton's remarks in interview, such as his answer to the question "were you involved in that chat?", to which he answered "no I don't believe I was", which Ms Tai suggested was not as clear a denial as would be expected of someone telling the truth;
  - the innate implausibility of Mr Thornton's defence that his account was hacked;
  - the inconsistencies in Mr Thornton's explanation regarding the hacking of his account, for example he stated in interview that he did not keep a note of passwords, whereas in evidence he stated that he wrote down passwords on sticky notes which he left in his office and which might have been seen by tradespeople passing through.
142. Ms Tai submitted that Mr Thornton's claim of being hacked was a mere assertion that was not backed by any independent evidence.
143. Ms Tai submitted that in relation to Charge 1(b) it was clear from the content of the chats that Mr Thornton was viewing and exchanging images of children.
144. Ms Tai submitted in relation to Charge 2 that Mr Thornton accepted that the mobile phone was his and that he was using it at the relevant time to access the sex story links. She submitted that the evidence suggested that he moved deliberately from one story to another rather than quickly flicking through.
145. Ms Tai accepted that the percentage of stories found on the phone that related to children was small, but submitted that this did not detract from the charge.
146. Ms Tai submitted that it was not possible to be 100% sure of precisely how the stories were phrased at the time when Mr Thornton accessed them, but that the panel could be satisfied on the balance of probabilities that the links contained sex stories involving children based on the content of the same links downloaded by DC Waddington on 10 August 2020 and 18 May 2021. She submitted that it was unlikely that either the title of the links or the content of them altered substantially over time. She submitted that whilst it was possible for stories to be deactivated, it was highly unlikely that all 9 links were inactive in 2017. Further, she submitted that there was movement from one link to



another in the course of the same day, namely from item ix “dad is my pimp”, accessed at 12.20.32 on 2 April 2017, to item iv “wayne.ker” at 12.21.49 on 2 April 2017, and the stories must have been active to have enabled this to occur.

147. In relation to Charge 3, Ms Tai submitted that the chat relating to Charge 1, and the content of the indexes and stories in Charge 2, clearly showed that the behaviour was carried out in pursuit of sexual gratification and therefore amounted to sexually motivated behaviour.

#### Submissions on the facts on behalf of Mr Thornton

148. Ms Molyneux relied on Mr Thornton’s good character and his many years working as a social worker. She urged the panel to bear in mind, when considering his responses in police interview, that he had been provided with little notice of his arrest and was not legally represented at the time.
149. In relation to Charge 1, Ms Molyneux submitted that the panel should take account of the fact that the charges were extremely old. Charge 1 dated back to 2011. Charge 2 dated back to 2017. Mr Thornton should not be criticised for not providing evidence to support his defence, particularly bearing in mind the passage of time and the attendant difficulty of obtaining supporting evidence that was now historic.
150. Ms Molyneux submitted that the only evidence that Social Work England could rely on was the fact that the Thunderball address belonged to Mr Thornton. There was no evidence to prove that the chat emanated from Mr Thornton’s home address; someone could have entered the chat room from an entirely different geographical address.
151. Ms Molyneux relied on the fact that no images were found on any of the multiple devices seized from Mr Thornton’s workplace and home. She submitted that it could not be proved that any images were in fact sent to his Thunderball address. She submitted that without the images it was not possible to prove that there were photographic images as opposed to illustrations or animated images or photos which were inoffensive. She submitted Mr Thornton told the police that his email account had been hacked immediately after his arrest.
152. In relation to Charge 2 Ms Molyneux submitted that the percentage of stories found which are alleged to relate to children was very small, some 1% of the overall total. Mr Thornton accepted that he used his mobile to access dating sites and adult pornography. Ms Molyneux submitted that DC Waddington had lied to the panel in relation to the dates on which he downloaded the stories and therefore his evidence regarding the

state of the stories at the time when he first analysed the mobile in 2019 could not be relied on.

153. Ms Molyneux submitted that it was not possible to know whether the stories had changed with time and the panel should not rely on the content of the stories as it appeared on the internet using the same link many years later, in 2020 and 2021. She submitted that it was not possible to know whether the sites were even active in 2017. She submitted that on the basis of the evidence relied on, Mr Thornton had only accessed each site once, for under a minute, which was not suggestive of an interest in the content.

### Legal Advice

154. The panel accepted the advice of the legal adviser who advised on the burden and standard of proof, the need to consider the charges separately, the meaning of sexual motivation, the need not to treat DC Waddington as an expert witness, the approach to take to the credibility of witnesses, the approach the panel should take to the delay in proceedings and the approach to Mr Thornton's good character.

### Decision on the facts

155. In reaching its decision on each charge the panel took account of Mr Thornton's good character in the context of a lengthy unblemished career.

### **Decision Charge 1**

156. In relation to Charge 1(a), the panel understood that it could not be proved that the Thunderball address had been used to enter the chat room from Mr Thornton's home address as opposed to some other location.
157. However the panel was satisfied that it was Mr Thornton who entered the chat line on 1 January 2011, as opposed some unidentified person hacking his MSN account.
158. Mr Thornton accepted that the Thunderball address was his at the time of the 1 January 2011 chat, and that he had been using the address between 2008 and 2015, including on MSN messenger, to chat with people about sex on a regular basis. He accepted that he had exchanged images of a sexual nature via the Thunderball address in the past.

159. Whilst the panel understood that it was for Social Work England to prove its case, and not for Mr Thornton to disprove it, nevertheless there could be no explanation for the entries on the chat log from the Thunderball address being made by someone other than Mr Thornton, unless the MSN account had been hacked. There was no evidence to support the suggestion that it had been hacked. The most that Mr Thornton had suggested was that his email address had been hacked. In the police interview and in cross examination, Mr Thornton said that his Facebook account was hacked “sometime last year” that being 2018. He did not suggest that he had been hacked in or around 1 January 2011. He said that his Facebook and an email address had been hacked, and that he had not been able to access or recover it and that he had subsequently received a lot of spam. However Mr Thornton made no reference in interview to his MSN account being hacked. There was no evidence that any hacking took place beyond Mr Thornton’s assertions. There was no evidence as to the hacking of the MSN account specifically. The MSN account is separate to Mr Thornton’s email account, as was confirmed and explained by Mr Waddington. Though the MSN account used the email address as what appears to be a username, they are not linked. The hacking of Mr Thornton’s email account would have no bearing on access to or the operation of Mr Thornton’s MSN account. Mr Thornton had provided no details as to when, how often or for how long the MSN account was hacked or explained how it was recovered.
160. Whilst the panel took account of Mr Thornton’s good character when considering his credibility, it also took account of the inconsistencies in his evidence regarding the hacking of his email address, for example the fact that he said in interview that he did not make a note of passwords, but in evidence said for the first time that he did make a note of passwords, on sticky notes, which he left in the office. The panel viewed the likelihood of tradespeople in Mr Thornton’s house entering his office, finding the password on a sticky note, and using it to indulge in chat relating to sexual activity with children stretching over some 1 ½ hours, to be fanciful.
161. The panel considered Mr Thornton’s evidence regarding the fact that his credit card had been used and his passport had gone missing, and concluded that this did not assist him as there was no supporting evidence, and no documentary evidence to suggest that Mr Thornton had even tried to obtain it.
162. In relation to 1(b) whilst the evidence that Mr Thornton had exchanged images of children was less clear, the panel was entirely satisfied that he had viewed such images, on the basis of evidence such as the 22.39.40 entry:

Thunderball: “hot vid how old”

Other: “I think 16”

Thunderball: “I’d agree luv that her tits are so big and pert so don’t drop when she takes her bra off”.

The panel concluded that it was clear from this that Mr Thornton was viewing an indecent image of a child at the time of participating in the chat.

163. The panel concluded that it was clear from such comments as “how young she” and “I’ll let you know when you go too young” and “about 14/15” and “how ynys she” “13”, that photos were being viewed of children.
164. For those reasons the panel found Charge 1(a) and Charge 1(b) proved and on the basis Mr Thornton viewed images.

#### Decision Charge 2

165. Mr Thornton accepted that he had accessed sex stories on his mobile phone at the relevant time; the only issue was whether he knowingly and deliberately accessed sex stories relating to children. The panel concluded that he did.
166. The panel had been provided with, and read the entirety of, the 10 August 2020 download, and the 18 May 2021 download, and concluded that there was very little difference between the two. The panel concluded from this that it was far more likely that the stories had been in existence in the same format in 2017, when it is alleged that Mr Thornton accessed them. The panel took account of DC Waddington’s evidence that when he examined Mr Thornton’s mobile in 2019 the stories were in the same form as the 2020 and 2021 downloads. The panel concluded that DC Waddington had acted in good faith when presenting his evidence and had been trying to assist the panel. He had no axe to grind and was an experienced police officer who had now retired from the force. The panel accepted that there had been considerable confusion in the production of exhibits but regarded DC Waddington as a credible witness.
167. It had been argued on behalf of Mr Thornton that the content of each link as at the date of access on Mr Thornton’s phone in 2017 could not be definitively be proven. The panel accepted that. However the panel concluded that it was more likely than not that the content of the stories had remained the same and remained accessible between 2017 and the downloads of RGW4 being obtained than that the links were deactivated or the contents significantly changed. The panel accepted the submissions provided by Ms Tai that the links themselves, containing the names of the stories, had not changed, and that this suggested that the names of the stories had not changed. The names reflected the story content, and the fact that they had not changed suggested that the content was unlikely to have changed significantly. Further, whilst DC Waddington accepted that

the Wayback Machine was no guarantee that the content had not changed since access in 2017, he was confident that the content was unlikely to have changed, based on his experience of using the Wayback Machine but also, importantly, his checks on archive.org.

168. The panel did not accept Mr Thornton's assertion that he happened upon the child sex story links whilst searching for adult stories. The panel accepted that the vast majority of stories found on his mobile phone related to adult stories rather than child stories, which had formed some 1% of the overall content. However it was clear that Mr Thornton also had an interest in child stories because he had clicked on the offending stories, at least 8 of which related to sexual encounters with children. The panel concluded that in relation to the majority of these it must have been clear from the title that the story related to child sex, for example "PE class" and "dad is my pimp part 3" and "child prostitute" and "young/s date". The panel understood that the stories were only accessed for a short amount of time; however the access was long enough, and frequent enough, in the panel's view, to suggest a deliberate desire to access material depicting sexual activity involving children. While some stories were only accessed briefly, others were accessed for longer periods, for example "PE Class" accessed for over 4 minutes before the link to "The Runaway" is accessed.
169. The content of the stories clearly related to sexual activity involving children; this would have been apparent to anyone reading or skimming the stories, as the panel had done. Mr Thornton had admitted to reading hundreds of stories on the site and must therefore have known the site well. He accepted in cross examination that the index pages do not pop up or come up on the front page and must be navigated to. The 'Young' index page contained links to stories about children and incest. This must have been navigated to, indicating that he was intentionally searching for stories of that kind. This applied also to the Wayne Ker index page containing links to stories such as "Teenage Model Orgy".
170. For those reasons the panel found Charge 2 proved.

### Decision Charge 3

171. In relation to Charge 1, the panel concluded that the chat on 1 January 2011 related to sexual activity involving children and suggested engagement in a sexual response. It was clear from the words used in the chat that the discussion and the viewing of indecent images of children was done in pursuit of sexual gratification and therefore it was sexually motivated.

172. In relation to Charge 2, the titles of the majority of the stories, and the content of all of them, was clearly sexual in nature, and the panel was satisfied that that Mr Thornton accessed them for his own sexual gratification and therefore it was sexually motivated.
173. Accordingly, the panel found Charge 3 proved in relation to Charge 1(a), Charge 1(b) and Charge 2.

#### Submissions on grounds and current impairment

174. Mr Thornton did not give evidence or provide additional material at this stage of the proceedings. He had previously submitted a three page document entitled “Reflection”, dated 12 April 2021.
175. Ms Tai submitted that Mr Thornton’s behaviour, as found proved, amounted to a significant departure from the type of behaviour expected of a registered social worker and that it amounted to misconduct.
176. Ms Tai submitted that in viewing indecent images of children, Mr Thornton had encouraged the exploitation of children and this had caused harm. She submitted that his actions had breached a fundamental tenet and brought the profession into disrepute. She submitted that Mr Thornton had shown little insight or remorse and had tried to cast blame on others, namely hackers and DC Waddington, and in his reflective statement of 12 April 2021 he had stated that he used pornography to cope with the stresses of work which he attributed in part to a lack of adequate supervision at work at the time. He referred in his reflective statement to engagement with counselling but it was unclear whether this was counselling to address a sexual interest in children. Ms Tai submitted that Mr Thornton’s fitness to practise is currently impaired.
177. Ms Molyneux conceded misconduct on the basis of the panel’s findings on the facts.
178. In relation to the issue of impairment, Ms Molyneux submitted that the behaviour found proved could not be said to amount to a public protection issue. In relation to the wider public interest, Ms Molyneux reminded the panel of Mr Thornton’s lengthy and unblemished career.

#### Advice on misconduct and current impairment

179. The panel accepted the advice of the legal adviser who advised the panel on the meaning of misconduct and impaired fitness to practise.
180. In relation to misconduct, the legal adviser referred to the case of *Roylance v General Medical Council No 2 [2001] 1 AC*, and advised the panel to ask whether, in its judgement, the charges found proved constituted a serious departure from the

standards of conduct that could properly be expected of a registered social worker. In accordance with the case of *Nandi v GMC [2004] EWHC 2317*, she advised the panel to consider whether the conduct would be regarded as deplorable by fellow practitioners.

181. In relation to impairment of fitness to practise, the legal adviser reminded the panel of the first three of the criteria set out in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927*, namely whether the registered social worker:

- Has in the past acted and/or is liable in the future to act so as to put a member of the public or members of the public at unwarranted risk of harm; and/or
- Has in the past and/or is liable in the future to bring the profession into disrepute; and/or
- Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

182. The legal adviser advised the panel, in accordance with the case of *Cohen v General Medical Council [2008] EWHC 581*, to ask whether Mr Thornton's conduct was easily remediable, whether it had in fact been remedied and whether it was highly unlikely to be repeated. She advised the panel to examine whether or not Mr Thornton had demonstrated insight into his past behaviour and whether the misconduct could be regarded as an isolated incident in an otherwise unblemished career.

183. In accordance with the case of *Grant [2011] EWHC 927*, the legal adviser advised the panel to ask whether a finding of impairment was required to uphold and maintain proper professional standards and to uphold and maintain public confidence in the profession of social workers and their regulator. She took the panel to the case of *Yeong v GMC [2009] EWHC 1923*.

### Decision on grounds and current impairment

184. The panel concluded that both Mr Thornton's sexually motivated engagement in online discussions relating to the sexual activity of children, and his sexually motivated online viewing of indecent images of children as young as 13, clearly fell far below the standards expected of a social worker and would be regarded as deplorable by fellow practitioners. The panel concluded that this conduct was serious and amounted to misconduct.

185. The panel also concluded that Mr Thornton's sexually motivated behaviour in accessing a sex story website depicting sexual activity involving children on multiple occasions clearly fell far below the standards expected of a social worker and would be regarded

as deplorable by fellow practitioners. The panel concluded that his conduct was serious and amounted to misconduct.

186. The panel concluded that Mr Thornton's actions in relation to Charge 1 should be regarded as an isolated incident, in that the events were confined to 1 ½ hours on one day. However the panel concluded that the events relating to Charge 2 could not be described as isolated in that they took place on multiple occasions, stretching from 21 February 2017 to 9 April 2017.
187. The panel concluded that the only insight demonstrated by Mr Thornton was confined to his remarks in his reflective statement, dated 12 April 2021, in which he expressed his understanding of how the public would regard the type of behaviour that he was accused of conducting. He also stated there that he had ceased using chatrooms and had sought help with a counselling service, but appeared to suggest that this was to overcome his need to resort to legal adult pornography rather than any acceptance of his sexual interest in children.
188. Mr Thornton had demonstrated no remorse into his actions and the panel had been given no reassurance that he would not repeat them. The panel had received no evidence to suggest that he had remediated his misconduct or understood the harm that could be caused to child victims through this type of activity.
189. The panel concluded that in viewing indecent images of children Mr Thornton had placed members of the public, namely the children whose images had been used, at unwarranted risk of harm. Children subjected to the taking of images for such purposes were placed risk of psychological harm, and without willing participants in the viewing of those images there would be no market to encourage the taking of them. The panel accepted that there was only one date on which Mr Thornton had been found to view online images of children, but in light of the absence of any remorse, remediation or adequate insight, the panel concluded that there is a risk that he will repeat this behaviour in the future.
190. Accordingly the panel concluded that Mr Thornton's fitness to practise is currently impaired on public protection grounds.
191. The panel also concluded that Mr Thornton's actions in Charges 1, 2 and 3 had breached a fundamental tenet of the profession and had brought the profession into disrepute. The panel concluded that the matters found proved are extremely serious, for the reasons set out in this determination, and that a finding of impairment is clearly required to protect confidence in social workers and their regulator, and to maintain professional standards for social workers.



192. Accordingly, the panel concluded that Mr Thornton's fitness to practise is also currently impaired on public interest grounds.

#### Submissions on sanction:

193. Mr Thornton did not provide any further evidence at the sanction stage.
194. Ms Tai submitted that a Removal Order was the appropriate and proportionate sanction in the circumstances of the case.
195. Ms Molyneux submitted that the panel should take account of the fact that Charge 1 was only 1 ½ hours in duration and that both charges had taken place in the course of Mr Thornton's private life. She submitted that no harm had been caused to the public by either charge. She submitted that Mr Thornton was a good social worker and there was a public interest in allowing him to practise whilst marking the seriousness of the findings. She submitted that a lengthy Suspension Order was the appropriate and proportionate sanction in the circumstances, as this would allow a future panel to review remediation and insight.

#### Advice on sanction:

196. The legal adviser advised the panel to take account of the Impairment and Sanctions Guidance published by Social Work England. She advised the panel to consider any aggravating and mitigating factors. She advised the panel to consider each available sanction in ascending order of severity and to apply the principle of proportionality by weighing the social worker's interests against the public interest. She advised the panel that the purpose of sanction is not to punish, but is to protect the public and the wider public interest.

#### Decision on sanction:

197. The panel took into account by way of mitigation that:
- Mr Thornton was a man of previous good character with a lengthy unblemished career
  - Some 12 years had passed since the events of Charge 1 and it was not suggested that Mr Thornton had repeated the behaviour covered by Charge 1 in that time
  - There had been considerable time taken in concluding the regulatory proceedings, and the hearing itself had adjourned three times after its commencement in May 2021, throughout which time Mr Thornton had been placed on an interim suspension order.
231. The panel regarded the following as aggravating features:

- a. The likely psychological harm caused to the child victims whose images had been used in the online chat room relating to Charge 1
- b. The age of the children in relation to Charge 1, one of whom was 13
- c. The lack of insight and remediation.

#### No Action; Advice; Warning

232. The panel concluded that the misconduct in this case was extremely serious, for the reasons set out earlier in this decision, and there were no exceptional reasons to merit taking no action, or to issue an advice or warning.

#### Conditions of Practice Order

233. The panel concluded that a conditions of practice order would be insufficient to protect the public and wider public interest in light of the seriousness of the misconduct, and the lack of insight and remediation. Furthermore, the misconduct was attitudinal in nature and had taken place outside the workplace and therefore there were no appropriate conditions that could be formulated or monitored in the circumstances.

#### Suspension Order

234. The panel accepted that a suspension order would protect the public, however this would only be in the short term. The maximum period of suspension permitted was for three years. The panel decided that this was insufficient in light of the seriousness of the misconduct, and the lack of insight and remediation. Furthermore the panel concluded that the public interest would not be adequately protected by a suspension order. The misconduct in this case had involved online discussions relating to sexual activity involving children and the viewing of indecent images of children as young as 13. The panel concluded that to permit Mr Thornton to return to registered practice after three years in those circumstances would damage confidence in the profession. For those reasons the panel concluded that a period of suspension was neither sufficient nor appropriate.

#### Removal Order

235. The panel took account of the mitigating features in this case: Mr Thornton's unblemished career hitherto, the gap of some 12 years since the commission of Charge 1 in which time it was not suggested that he had engaged in further online activity with children, and the time taken to conclude these proceedings, when Mr Thornton had

been unable to work due to the imposition of an interim suspension order. The panel understood that he had suffered anxiety and stress whilst the proceedings hung over him.

236. However it was the judgement of the panel that any lesser sanction than a Removal Order would be insufficient in the circumstances of this case, to protect the public and the wider public interest.
237. In 2011 Mr Thornton engaged in sexually motivated behaviour by taking part in online discussions regarding sexual activity involving children and viewing indecent images of children as young as 13. In so doing he had contributed to the likely psychological harm of child victims. He had provided no evidence of remediation or insight into the effect of his behaviour on these children, and in those circumstances the panel could not be satisfied that he would not repeat his behaviour, despite the passage of time since then.
238. The panel accepted that Charge 1 had not taken place in the workplace. However his behaviour had demonstrated a sexual interest in children. The panel concluded that to permit him to work as a social worker would place members of the public, and in particular young children, at risk of harm. Mr Thornton had worked for some 9 years as a social worker in the field of child safeguarding, and he may well decide to return to that field if permitted to do so. The panel concluded that it would be entirely wrong to permit Mr Thornton to practise as a social worker, as his work could require him to make judgements related to the area of child sexual abuse, and his judgement in this area may be compromised. His work could also place him in contact with the very type of child victim who had suffered psychological harm through abusive online activity.
239. Following Charge 1, which took place in 2011, Mr Thornton then went on, in 2017, to access fictitious sex stories depicting sexual activity involving children for his own gratification. Whilst no harm to the public resulted from this behaviour, the content of the sex stories was such that confidence in the profession would be adversely affected if Mr Thornton were to be allowed to practise as a social worker, particularly as his most recent role had involved specialising in the care of children through his work as an Independent Reviewing Officer.
240. Mr Thornton had not provided any evidence of remediation or insight into the effect of his actions on young children. He had stated that he no longer participated in online chats of any form and that he had undertaken counselling, in light of his approach to adult pornography, which he had used, he says, as a way of coping with the stresses of his job as a social worker. However he continued to deny sexual misconduct involving children, and whilst it was his right to defend himself against the allegation, he had demonstrated no insight into the seriousness of his own actions other than to explain his understanding of the seriousness of such behaviour, were it to take place.

241. In light of the seriousness of the past misconduct, the aggravating features of the case and the lack of evidence of remediation and insight, as set out in the body of this decision, the panel concluded that it had no option but to impose a Removal Order.

242. In so concluding the panel took account of the following paragraphs of Social Work England's Impairment and Sanctions Guidance which states:

- 161: "Decision makers should consider imposing a more serious sanction if they find the social worker impaired because of sexual misconduct. This is because of the seriousness of these types of cases"
- 161: "Serious cases of sexual misconduct may include, but are not limited to...  
Conduct involving children"
- 163: "In all cases of serious sexual misconduct it will be highly likely that the only proportionate sanction is a removal order"

243. Accordingly, the sanction imposed by the panel is a Removal Order.

#### Interim order:

244. Ms Tai applied for the existing interim order to be revoked and the panel agreed to do so.

244. Ms Tai then applied under Paragraph 11 of Schedule 2 of The Social Workers Regulations 2018 for an interim suspension order for a period of 18 months to cover the appeal period.

245. Ms Molyneux did not oppose the application.

246. The legal adviser advised that the panel may make any interim order if it considers an order is necessary for the protection of the public or is in the best interests of the social worker. She advised the panel to act proportionately in reaching its decision.

247. The panel concluded that there is a real risk that Mr Thornton would repeat his behaviour if permitted to practise unrestricted in the interim period, for the reasons set out in its substantive decision, and concluded that an interim order is necessary to protect the public. The panel also concluded that an order is otherwise in the public interest, for the reasons set out in its substantive decision.

248. The panel concluded that an interim conditions of practice order would be unworkable in the circumstances of this case, for the same reasons as set out in its substantive decision.

249. Accordingly, the panel made an interim order of suspension for a period of 18 months. However if there is no appeal against the final order, the interim order will expire when the appeal period of 28 days expires. If there is an appeal against the final order, the interim

order will expire at the conclusion of 18 months or when the appeal is withdrawn or otherwise finally disposed of.

### Right of Appeal:

250. 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.
251. 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.
252. 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.
253. 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:

254. 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

255. 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:

256. 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>.