Social worker: Babara Margaret Doreen Burchell
Registration number: SW42248
Fitness to Practise
Final Hearing

Dates of hearing: 06 November 2023 to 14 November 2023

Hearing venue: Remote hearing

Hearing Outcome: Found allegation 1: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 proved
Ground: Misconduct
Fitness to practise impaired
Removal order

Interim Order: Interim suspension order (18 months)

Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) ("the regulations").

2. Ms Burchell did not attend and was not represented.

3. Social Work England was represented by Ms Sophie Sharpe, case presenter on behalf of Capsticks LLP.

Adjudicators	**Role**
Lesley White	Chair
Sarah Redmond	Social worker adjudicator
John Brookes	Lay adjudicator

Simone Ferris	Hearings officer
Gabriella Berettoni	Hearings support officer
Christopher Binns	Legal adviser

Service of notice:

4. The panel of adjudicators (hereafter "the panel") heard the following submissions from Ms Sharpe on the service of notice:

    - The notice of this hearing was sent on the 6 October 2023 to the email address provided by Ms Burchell to Social Work England in accordance with Rule 44 (a) (iii) of the Fitness to Practise Rules (as amended) 2019 ("The Rules").
    - The notice of hearing was served on Ms Burchell within 28 days in accordance with Rules 14(a) .
    - The notice of hearing informed Ms Burchell of the date, time, and the statement of case in accordance with Rule 15.

5. Ms Sharpe submitted that the notice of this hearing had been duly served in accordance with the Rules.

6. The panel of adjudicators had careful regard to an email from Ms Burchell to Social Work England dated 4 November 2023 and to the documents contained in the final hearing service bundle (40 pages) as follows:

    - A copy of the notice of the final hearing dated 6 October 2023 and addressed to Ms Burchell at her email address which she provided to Social Work England;
    - An extract from the Social Work England Register as at the 6 October 2023 detailing Ms Burchell's registered email address;

- A copy of a signed statement of service, on behalf of Social Work England, confirming that on 6 October 2023 the writer sent by email to Ms Burchell at the email address referred to above: notice of hearing and related documents;

7. The panel accepted the advice of the legal adviser in relation to service of notice that:

    - Subject to Rule 14(b) the regulator must notify the registered social worker under the provisions of paragraph 10(4) of Schedule 2 not less than 28 calendar days before the commencement of the fitness to practise hearing unless the registered social worker consents to a shorter period.
    - The notice of hearing must include the date, time and place of the hearing, the statement of case setting out those matters that are agreed between the parties, those matters that are not agreed, and the basis for alleging impairment of fitness to practise.
    - Subject to Rule 44 (a) (iii) A notice or communication to the registered social worker or applicant under these Rules must be served by being sent by electronic email to an electronic email address provided by the registered social worker or applicant to the regulator.
    - Subject to Rule 44 (b)(iii) service of notice may be proved by a signed statement from the person sending by ordinary post, electronic mail or delivering the notice or document in accordance with this Rule.
    - Subject to Rule 45 (e) where any notice or communication is served in accordance with the Rules it must be treated as being served where the notice or communication has been sent by electronic mail, on the day the electronic mail was sent.

8. Having had regard to Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Ms Burchell accordance with Rules 45.

Proceeding in the absence of the social worker:

9. The panel heard the submissions of Ms Sharpe on behalf of Social Work England. Ms Sharpe submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Ms Burchell and as such there was no guarantee that adjourning today's proceedings would secure her attendance.

10. Ms Sharpe further submitted to the panel that:

    - The email from Ms Burchell of the 4 November 2023 confirmed she was aware of the hearing. Her email was sent from the email address supplied to Social Work England.

- Ms Sharpe submitted that there is electronic evidence that Ms Burchell accessed the statement of case disclosed to her on the 4 July 2023 and there is evidence of correspondence with Social Work England.
- Ms Burchell did not attend the previous abandoned hearing in August 2022.
- Ms Burchell did not respond to the directions order of the 19 June 2023 that she should disclose her case to Capsticks by 1 August 2023.
- Ms Burchell did not respond to enquires regarding whether she would attend the case management meeting on the 27 October 2023 and she did not attend.
- The notice of hearing asked Ms Burchell to confirm by 30 October 2023 whether she was going to attend this hearing, or it would proceed in her absence. In her email of the 4 November 2023 Ms Burchell confirmed that she did not intend to attend the hearing. She did not request an adjournment.

11. Ms Sharpe submitted to the panel that it would be fair to proceed in the absence of Ms Burchell as:

- no adjournment had been requested;
- an adjournment would not secure Ms Burchell's attendance;
- Ms Burchell had not made a substantive response to the case against her;
- Two professional witnesses had made themselves available;
- a culture of adjournment is to be discouraged;
- Ms Burchell has the right not to attend the hearing.

12. Ms Sharpe therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.

13. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2002] UKHL 5*; *General Medical Council v Adeogba [2016] EWCA Civ 162*. The panel also took into account Social Work England's guidance 'Service of notices and proceeding in the absence of the social worker'. In terms of the relevant factors to be taken into account, in the case of *GMC v Adeogba [2016] EWCA Civ 162 [21*] the Court of Appeal confirmed that the principles set out in *R v Jones [2002] UKHL 5*, provide a helpful starting point in determining whether the discretion to proceed in absence should be exercised. The Court of Appeal did however acknowledge that the Jones case concerned a decision to proceed with a criminal trial and indicated that the decision to proceed with a regulatory hearing must be guided by the regulator's main statutory objective. Social Work England's overriding objective is the protection of the public. The panel should consider the following factors when deciding whether to proceed in the absence of the social worker.

- Fairness - In exercising that discretion, the panel had to balance the interests of Ms Burchell against the interests of Social Work England and the public in an expeditious disposal of the allegations against Ms Burchell;
- Public Protection - The decision about whether to proceed must be guided by Social Work England's primary objective to protect the public. Social workers have a responsibility to engage with Social Work England in response to concerns about their fitness to practise. Social workers accept this responsibility when they are registered;
- Social Work England's Professional Standard 6.7 - 'As a social worker, I will cooperate with any investigations by my employer, Social Work England, or another agency, into my fitness to practise or the fitness to practise of others;
- Why the social worker is absent: Adjudicators should consider the nature and circumstances of the social workers absence, in particular whether the behaviour may be deliberate and voluntary;
- The adjudicators might consider that it is not appropriate to proceed with a hearing if (both of the following): they have independent evidence that the social worker is involuntarily absent, for example through incapacity;
- The social worker otherwise intended to attend the hearing;
- The question of whether an adjournment would secure Ms Burchell's attendance was also relevant.
- The court in *General Medical Council v Adeogba* had concluded that, *"where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".*

14. The panel considered all of the information before it, together with the submissions made by Ms Sharpe on behalf of Social Work England. The panel noted that Ms Burchell had not attended either the abandoned final fitness to practise hearing in August 2022 or the Case Management Meeting of the 27 October 2023 and had not substantially engaged with Social Work England or its predecessor Health and Care Professions Council ("HCPC"). The panel noted that Ms Burchell had been sent notice of today's hearing on the 6 October 2023 and the panel was satisfied that she is aware of today's hearing. This was confirmed by the email sent by Ms Burchell on the 4 November 2023 to Social Work England that confirmed that she was aware that the hearing was taking place today and did not intend to attend.

15. The panel therefore concluded that Ms Burchell had chosen voluntarily to absent herself as indicated by the email sent by her on the 4 November 2023. The panel had no reason to believe that an adjournment would result in Ms Burchell's attendance. Having weighed the interests of Ms Burchell in respect of her attendance at the hearing with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Ms Burchell's absence.

Allegations:

16. The allegation arising from the regulatory concerns referred by Social Work England's Case Examiners on 19 January 2022 is:

> "*Whilst registered as a social worker:*
>
> 1. *in your role as Responsible Individual for Capital Care and Foster Ltd trading as "365 Foster Care", you failed to adequately address and/ or resolve breaches of the Fostering Services (England) Regulations 2011 as identified by Ofsted in compliance notices dated 3 November 2017, namely in relation to:*
>
> *1.1 Regulation 35 – Review of quality of care and/or;*
> *1.2 Regulation 20 – Fitness of workers and/or;*
> *1.3 Regulation 17 – Support, training and information for foster carers and/or;*
> *1.4 Regulation 12 – Arrangement for the protection of children and/or;*
> *1.5 Regulation 11 – Independent fostering agencies – duty to secure welfare and/or;*
> *1.6 Regulation 8 – Registered Person, general requirements.*
>
> *The matters set out in paragraph 1 amount to the statutory ground of misconduct.*
>
> *Your fitness to practise is impaired by reason of misconduct.*

Summary of evidence:

17. Prior to the commencement of the hearing the panel was provided with and considered following documents:

Social Work England

- Social Work England Statement of Case (38 pages)
- Hearing Timetable (5 pages)
- Final Statements Bundle (32 pages) containing the statements of SS and HL
- Final Exhibits Bundle (720 pages) containing:
    - S S/1 – Care Standards Act 2000, s14 2000
    - SS/2 - Fostering Service (England) Regulations 2011, Regulation 5(D), 2011

- SS/3 – Inspection Report 06.06.2014
- SS/4 – Social Care Inspection Framework
- SS/5 – Monitoring Visit 18.11.2015 to 19.11.2015
- SS/6 – Inspection Report 26.09.2016 to 30.09.2016
- SS/7 – Inspection Report 02.10.2017 to 06.10.17
- SS/8 – Ofsted, Compliance Notice - Regulation 35 03.11.17
- SS/9 – Ofsted, Compliance Notice - Regulation 20 03.11.17
- SS/10 – Ofsted, Compliance Notice - Regulation 17 03.11.17
- SS/11 – Ofsted, Compliance Notice - Regulation 12 03.11.17
- SS/12 – Ofsted, Compliance Notice - Regulation 11 03.11.17
- SS/13 – Ofsted, Compliance Notice - Regulation 03.11.17
- SS/14 – Monitoring Investigation report 13.12.2017
- SS/15 – Monitoring Investigation report, day 2 14.12.2017
- SS/16 – Monitoring Investigation Evidence 13.12.2017 to 14.12.2017
- SS/17 – Letter enclosing notice of proposal to cancel 26.01.2018.
- SS/18 – Letter from Social Worker, written representations on the notice of proposal to cancel 16.02.2018.
- SS/19 – Notice of decision to cancel 12.04.2018.
- SS/20 - Fostering Service (England) Regulations 2011, Schedule 6,
- SS/21 - Fostering Service (England) Regulations 2011, Regulation 8
- SS/22 - Fostering Service (England) Regulations 2011,Schedule 1
- HL/0 – Report following October inspection 02.10.2017.
- HL/1 – Compliance Notice Regulation 35 03.11.2017
- HL/2 - Compliance Notice Regulation 20 03.11.2017
- HL/3 - Compliance Notice Regulation 17 03.11.2017
- HL/4 - Compliance Notice Regulation 12 03.11.2017
- HL/5 - Compliance Notice Regulation 11 03.11.2017
- HL/6 - Compliance Notice Regulation 8 03.11.2017
- HL/7 – Toolkit, HL - 385-454
- HL/8 – Toolkit, JG -

- HL/9 – Monitoring Visit Evidence 2017
- HL/10 – JW's audit of cases
- HL/11 – Regulation 35 Report September 2017
- HL/12 – Social Care Compliance Handbook 2018
- HL/13 – Notice of Proposal to Cancel 26.01.2018.
- HL/14 – Social Worker's Written Representations 16.02.2018
- HL/15 – Minutes for Case Review Conference 26.03.2018
- HL/16 - Notice of Decision to Cancel 12.04.2018.

- Social worker response bundle (10 pages)

Background

18. On 13 July 2018 the HCPC received a referral regarding the Respondent social worker, Ms Burchell ("the Social Worker"). The referral was made by SS, Social Care Compliance Inspector, Compliance and Investigatory Team, Ofsted.

19. The Social Worker was the Responsible Individual ("RI") and Director of Capital Care and Foster Care trading as "356 Foster Care" ("the Agency") from 17 November 2015.

20. The Agency was a privately owned fostering agency based in Maidstone, Kent which provided short term, long term, permanent, respite, emergency, remand and parent and child foster placements.

21. In her role as the RI, the Social Worker was responsible for supervising the management of the Agency pursuant to Regulation 5(1)(d) of the Fostering Regulations ("the Regulations") which provides:

> *"(d) in the case of an organisation carrying on a fostering agency, where the organisation has given notice to the Chief Inspector of the name, address and position in the organisation of an individual ("the responsible individual") who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the fostering agency, the responsible individual, satisfies the requirements of paragraph (2) as to fitness*."

22. The requirements of Regulation 5(2) ("paragraph 2") are as follows:

> *"(a) the person is of integrity and good character,*
>
> *(b) the person is physically and mentally fit to carry on the fostering agency, and*
>
> *(c) full and satisfactory information is available in relation to the person in respect of each of the matters specified in Schedule 1.*

23. The RI is the representative of the Provider. Regulation 8 requires the following of the Registered Provider (for which the RI is the representative):

> *"(1) The registered provider and the registered manager must, having regard to—*
>
> *(a)the size of the fostering agency, its statement of purpose, and the numbers and needs of the children placed by the fostering agency, and*
>
> *(b)the need to safeguard and promote the welfare of the children placed by the fostering agency,*
>
> *carry on or manage the fostering agency (as the case may be) with sufficient care, competence and skill."*

24. The Agency was subject to a number of inspections by Ofsted as required. Concerns were identified during a number of those inspections.

25. The Agency was subject to a scheduled full inspection on 6 June 2014. This inspection took place prior to the Social Worker's appointment as RI. Four statutory requirements were set following this inspection.

26. Statutory requirements are not the highest level of compliance action available to Ofsted and are set following a failure to meet the Regulations, which the Agency should meet at all times.

27. The Agency was subject to a Monitoring Visit on 18 and 19 November 2015. At this time, the Social Worker was acting as the RI . A Monitoring Visit falls outside of the usual inspection schedule and focusses on the identified concerns, including assessing an Agency's progress in meeting the requirements and Regulations.

28. Eight statutory requirements were identified by the Monitoring Visit, which included:

    a. Regulation 6 (1)
    b. Regulation 37 (3) (a) – (e)
    c. Regulation 17 (1)
    d. Regulation 26 (Schedule 3)
    e. Regulation 23 (4)
    f. Regulation 28 (2)
    g. Regulation 20 (1)(a)(b), (2), (3)(a)(b)(c) (Schedule 1)
    - Regulation 21 (4)(a)(b)

29. A full inspection of the Agency took place between 26 and 30 September 2016. The Social Worker was the RI at the time of this inspection. The Agency was judged as "requiring improvement" and the report provided the following four statutory requirements:

    a. Regulation 23(4)(5)

    b. Regulation 11(1)(a)

c. Regulation 35 (1)(2) (3)

d. Regulation 20 (1)(a); (3)(c)

30. A further full inspection of the Agency took place between 2 and 6 October 2017. HL, was a Social Care Compliance Inspector at Ofsted at that time. HL conducted the inspection paired with a Lead Inspector (JG). HL's role was the Team Member. The Agency was judged as "inadequate" overall as a result of serious and widespread failings and the report provided twelve statutory requirements:

a. Regulation 8(1)(b) - The registered provider and the registered manager must, having regard to— b) the need to safeguard and promote the welfare of the children placed by the fostering agency, carry on or manage the fostering agency (as the case may be) with sufficient care, competence and skill.

b. Regulation 11(a) - The registered person in respect of an independent fostering agency must ensure that— (a) the welfare of children placed or to be placed with foster parents is safeguarded and promoted at all times.

c. Regulation 12(1)(a)(b) - The fostering service provider must prepare and implement a written policy which— (a) is intended to safeguard children placed with foster parents from abuse or neglect, and (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.

d. Regulation 13(3)(a)(b) - The fostering servicer provider must prepare and implement a policy, which is agreed with the local police, setting out— (a) the measures to be followed to prevent children placed with foster parents from going missing form their placement, and (b) the procedure to be followed if a child is missing from a foster parent's home without permission.

e. Regulation 15(2)(a)(b) - In particular, the fostering service provider must ensure that each child— (a) is a registered patient with a general medical practitioner who provides primary medical services under Part 4 of the National Health Service Act 2006, (b) has access to such medical, dental, nursing, psychological and psychiatric advice, treatment and other services as the child may require.

f. Regulation 16(2)(a)(b)(c) - In particular, the fostering service provider must— (a) implement a procedure for monitoring the educational achievement, progress and school attendance of children placed with foster parents, (b) promote the regular school attendance and participation in school activities of children of compulsory school age placed with foster parents, and (c) provide foster parents with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

g. Regulation 17 - The fostering service provider must provide foster parents with such training, advice, information and support, including support outside office hours, as appears necessary in the interests of children placed with them.

h. Regulation 20(1)(a)(2)(a)(b)(c) – 1) The fostering service must not— (a) employ a person to work for the purposes of the fostering service unless that person is fit to do so. (2) For the purposes of paragraph (1), a person is not fit to work for the purposes of a fostering service unless that person— (a) Is of integrity and good character. (b) Has the qualifications, skills and experience necessary for the work they are to perform. (c) Is physically and mentally fit for the work they are to perform.

i. Regulation 21(4)(a)(b) - The fostering service provider must ensure that all persons employed by them— (a) receive appropriate training, supervision and appraisal, and (b) are enabled from to time to time to obtain further qualifications appropriate to the work they perform.

j. Regulation 23(7) - The fostering service provider must ensure that the fostering panel has sufficient members, and that individual members have between them the experience and expertise necessary, to effectively discharge the functions of the panel.

k. Regulation 35(1)(a)(b)(2)(3) - The registered person must maintain a system for— (a) monitoring the matters set out in Schedule 6 at appropriate intervals, and (b) improving the quality of foster care provided by the fostering agency. (2) The registered person must provide the Chief Inspector with a written report in respect of any review conducted for the purposes of paragraph (1) and, on request, to any local authority. (3) The system referred to in paragraph (1) must provide for consultation with foster parents, children placed with foster parents, and their placing authority (unless, in the case of a fostering agency which is a voluntary organisation, it is also the placing authority).

l. Regulation 36(1) - If any of the events listed in column 1 of the table in Schedule 7 take place in relation to a fostering agency, the registered person must without delay notify the persons or bodies indicated in respect of the event in column 2 of the table.

31. Of those twelve requirements, six were issued as compliance notices. Compliance notices are a legal notice served on the Agency which detail the failure of the Agency to meet specific Regulations. Agencies are given until midnight on the last day of the notice to demonstrate their compliance with the relevant Regulations. Failure to meet the compliance notice can cause Ofsted to, amongst other actions, cancel the provider.

32. The Agency was served with the following compliance notices:

    a. Regulation 35 – Review of quality of care;

    b. Regulation 20 – Fitness of workers ;

    c. Regulation 17 – Support, training and information for foster carers ;

    d. Regulation 12 – Arrangement for the protection of children;

    e. Regulation 11 – Independent fostering agencies – duty to secure welfare ;

    f. Regulation 8 – Registered Person, General requirements.

33. The date of service of each of the compliance notices was 3 November 2017. The compliance notices stated that the actions needed to be completed by 12 December 2017.

34. HL and JG conducted a monitoring visit on 13 to 14 December 2017 in order to assess whether the compliance notices had been met by the Agency. HL and JG took notes from this visit.

35. A letter was sent to the Social Worker on 26 January 2018 notifying of her of Ofsted's proposal to cancel the Agency. The notice of proposal to cancel sets out the ways in which the Agency had not met the compliance notices.

36. On 16 February 2018 Ms Burchell responded to the notice of proposal to cancel by providing written representations. The Agency's written representations were considered by a Panel, which is usually made up of a Regulatory Inspection Manager from the area in which the Agency is situated; another Regulatory Inspection Manager who is not otherwise involved in the case, and a Senior Her Majesty's Inspector ("HMI"; now His Majesty's Inspector).

37. A notice of decision to cancel the Agency was issued on 12 April 2018. The effect of this notice was that, unless an appeal was received, the fostering agency must not carry on its business after 12 May 2018, namely 28 days following the date of the notice. The panel has seen no evidence of an appeal.

Evidence relied upon by Social Work England

38. Ms Sharpe called the following witnesses who gave evidence to the panel:

- SS - Social Care Compliance Officer at Ofsted
- HL - Social Care Regulatory Inspector at Ofsted at the time

39. The panel first heard oral evidence from SS who was the Social Care Compliance Officer at Ofsted when concerns about the Agency arose in 2017 which resulted in a finding of 'inadequate' following an inspection on the 2 to 6 October 2017. SS told the panel that he was not involved in inspecting the Agency and he had never met Ms Burchell.

40. SS explained to the panel that the fostering regulations require a fostering agency to have a Registered Manager. The Registered Manager is formally registered with Ofsted who may refuse registration if the person is found not to be a fit and proper person in accordance with the fostering regulations. SS told the panel that there is a requirement under the fostering regulations for the fostering agency to appoint a RI. Where the fostering agency is a company the RI should be a director, chair, or other officer. SS stated that the fostering regulations do not require the RI to be a registered social worker. The RI is responsible for the oversight and supervision of the management of the fostering agency. SS told the panel that in a very specific set of circumstances, normally where the agency was small, the RI and the Registered manager could be the same person. If an agency changes the RI Ofsted must be notified. SS told the panel that whether the RI or the Registered manager is held responsible for non-compliance depends on the circumstances of the case.

41. SS told the panel that Ms Burchell was the RI of the Agency between 17 November 2015 up to the cancellation of the Agency in May 2018. SS told the panel he understood that Ms Burchell was a director of the Agency.

42. SS told the panel that a full inspection by Ofsted looks at all the areas of regulation but with Key lines of Inquiry ("KLI") that may be identified from previous inspections or notifications. SS explained to the panel that the Inspection report is agreed between the inspector and their manager. The inspection report will identify whether there is non-compliance with requirements and regulations and the actions that are required by the agency to ensure compliance. A monitoring visit will then be arranged. SS told the panel that a monitoring visit is not a full or interim inspection, and they fall outside of the normal inspection cycle. They tend to arise when there are concerns in relation to a provider or when Ofsted is monitoring them in order to see how much progress they have made in relation to meeting the requirements and regulations. Monitoring visits are much more focused in comparison to a full inspection where Ofsted assesses the provider as a whole, in relation to all of the regulations. An interim inspection is more focused in comparison to a full inspection but wider in scope than most monitoring visits. After the monitoring visit Ofsted will hold a case review to see whether the actions are met and decide on next steps.

43. SS explained to the panel that the time period for an agency to comply with the compliance notice is agreed at the case review and depends on the requirements that need to be met and how urgent it is. The level of urgency is decided on a case-by-case basis. Whether an agency has complied with a notice is on a pass or fail basis. The action that Ofsted takes to continuing non-compliance is on a proportionate basis depending on the nature of the non-compliance.

44. SS told the panel that a full inspection of the Agency took place between the 2 and 6 October 2017 and the Agency was given an overall grading of 'inadequate' in the areas of leadership and management, safeguarding of children and the protection of children. The Agency was sent six compliance notices on the 3 November 2017 setting out the concerns and the steps it should take to comply with them. A monitoring visit was arranged for 13 and 14 December 2017.

45. SS told the panel that it is paramount that the fostering regulations are complied with as the government has decided to put them into law to safeguard children. Ms Burchell as RI was responsible for maintaining effective management oversight of the agency and Ofsted would expect Ms Burchell to take actions to comply with the requirements and regulations and to keep children safeguarded.

46. SS told the panel that after the monitoring visit on the 13/14 December 2017 the inspectors concluded that the concerns set out in the compliance notices had not been met by the Agency. A case review was held after the monitoring visit where the decision was made to notify the Agency of a Proposal to cancel its registration. The Notice of Proposal to cancel was sent to Ms Burchell as the RI, on the 26 January 2018.

47. SS explained to the panel that written representations against the Notice of Proposal to cancel were received by Ofsted from Ms Burchell on behalf of the Agency on the 16 February 2018.

48. SS explained to the panel that the Agency's written representations were considered by a panel consisting of a Regulatory Inspection Manager from the area of where the Agency resides, another Regulatory Inspection Manager who has had nothing to do with the case and a Senior Her Majesty's Inspector (HMI) who could be from any region. The panel noted that the written representations confirmed significant shortfalls of the Agency. SS was not involved in the meeting.

49. SS told the panel that after the meeting upholding the Notice of Proposal to cancel, his line manager instructed him to refer Ms Burchell to the HCPC, the social work regulator at the time. SS told the panel that although he did not make the decision to refer Ms Burchell to HCPC, as a qualified social worker she should have understood the need to safeguard children.

50. The panel heard evidence from HL who confirmed that she was employed as an inspector by Ofsted during the period covered by the allegations. HL informed the panel that she had been an inspector at Ofsted for 17 years and had completed around 50 inspections per year.

51. HL told the panel that she carried out a full inspection of the Agency with JG between the 2 and 6 October 2017. HL explained that Ofsted gave the Agency notice it was going to carry out a full inspection. HL and JG identified KLIs that they would want to explore further. The KLIs are identified from previous recommendations, concerns and notifications made. During the inspection they would talk to the RI, foster carers, staff, managers and the children.

52. HL told the panel that the regulations stated that every fostering agency had to identify a RI and Ms Burchell was identified as the RI for the Agency.

53. HL confirmed to the panel that the full inspection identified that 12 regulations were breached with six serious enough to warrant compliance notices being put in place. The compliance notices were issued on 3 November 2017. The deadline for actions by the Agency to comply with each regulation was decided during the case review held with the HMI where they look at the compliance handbook, decide on the compliance notices and the actions that are required. The deadline is based on a balance between giving the Agency the chance to remedy the situation against the need to protect children. All of the compliance notices stated that the actions must be taken by 12 December 2017. HL told the panel that she and JG carried out a monitoring visit on 13/14 December 2017 to review the steps taken by Ms Burchell as the RI since the compliance notices were issued. The monitoring visit was carried out at the Agency with an expectation that the relevant documents would be available to her and JG. HL told the panel that Ofsted was not prescriptive about the form of the written evidence to be provided. The question was whether the information is effective and useful evidence to support the care of children.

54. HL informed the panel that she and JG made notes during the visit which form their "Toolkits", which allows one person to make notes while the other is asking questions and vice versa. Both sets of notes will therefore be slightly different. They would then compile their notes to form a draft report and present their findings at a case review conference.

55. HL explained to the panel that after the inspection of the 2 to 6 October 2017 the draft Inspection report was made available to the Agency to challenge any findings. If the Agency had challenged the conclusions of the report another case may have been opened and the evidence assessed by the Social Care Inspectorate to see whether a new visit should be arranged. The same applied to the report prepared after the monitoring visit on the 13/14 December 2017. Neither report was challenged and both were published on the Ofsted website.

56. HL explained that the Agency is issued with compliance notices which include a number of "steps" it must undertake. The priorities are those designed to safeguard children.

57. HL told the panel that a compliance notice was issued in relation to Regulation 8 after the inspection on the 2 to 6 October. HL explained to the panel that the RI and the Registered Manager when one is in place are both responsible for ensuring the Agency is compliant with Regulation 8. The RI is a registered person in the eyes of Ofsted as their role is intrinsically linked to the Agency's registration. The RI oversees the work of the registered manager in their day to day role and is responsible for ensuring they have sufficient training for their role.

58. HL told the panel that Ofsted did not agree with Ms Burchell that JW who was in post on the inspection on 6 October was a fit person to be the Registered manager. At the visit on 13/14 December 2017 Ms Burchell confirmed that the employment of JW, had been terminated. Ms Burchell was herself acting as the Registered Manager with day to day responsibility in addition to her overall duty to ensure the safe and effective running of the Agency. HL told the panel that Ms Burchell had appointed an interim manager who worked 2 days a week. Ofsted was concerned about the suitability of the interim manager as she had been the previous manager in 2016 when the Agency had been found to be inadequate.

59. HL told the panel that any breach of the requirements might breach regulation 8 which is an overarching regulation. HL explained that Ofsted determines whether any progress could be evidenced in respect of each of the steps. The steps need to be wholly or mainly met, taking into account it was the responsibility of Ms Burchell and the Registered Manager to provide sufficient evidence that a regulation had been satisfied.

60. HL told the panel that there were widespread failures and the compliance notices had not been met. Although Ms Burchell was responsible for overseeing all management and safeguarding responsibilities, she did not provide any written or verbal evidence to show her understanding of her registered role nor had she conducted a skills audit to assess and action the shortfalls. For example, Ms Burchell could only state that she had arranged one training course which she was unable to evidence.

61. HL told the panel that Ms Burchell had demonstrated little understanding of the steps necessary in order to safeguard children. Ms Burchell could not evidence that she had oversight of the safeguarding plans for any of the children or the training needed for any of the foster carers to understand the individual needs of the children in their care. The safe care plans should be prepared when or before the child moves in with the foster carer. Every child should have a safe care plan and the foster carer should have robust understanding of how keep the child safe.

62. HL told the panel that the Agency used the CHARMS case management system and when she reviewed CHARMS there was no record of Ms Burchell looking at case records, making suggestions or reviewing supervision records. Ms Burchell stated that she had learnt how to use CHARMS from another agency but there was no evidence that she had put what she had learnt into operation. HL told the panel that Ms Burchell did not provide a paper alternative and was unable to give a verbal demonstration of her knowledge of the eight children in the Agency at the time.

63. HL told the panel that after the proposal to cancel was issued on the 26 January 2018, Ms Burchell on behalf of the Agency made written representations on the 16 February 2018. The written representations included an action plan in relation to regulation 8. HL told the panel that the action plan was insufficient as there was no clarity of assessment of risks to children and how they were going to be managed.

64. HL told the panel that a compliance notice was issued on the 3 November 2017 in relation to Regulation 11 which required that the welfare of children placed or to be placed with foster parents was safeguarded and protected at all times. The investigators found that foster carers were not equipped with the knowledge or skills to adequately safeguard children. For instance, there was one young person who was at risk of contacting a perpetrator on the internet. The internet/ social media policy in place to protect this young person was for the foster carer to “turn the router off”. The foster carer did not have an understanding that the child could use mobile data on their phone and the same young person later harmed herself. HL said that they found that there was no discussion about safety for this young person and no evidence that a safer care plan had been formulated involving the foster carer and the child.

65. HL told the panel that the findings of the 13/14 December 2017 monitoring visit showed that children’s risk assessments had not been updated since the last visit. Risk management strategies remained rudimentary and did not provide foster carers with sufficient information about how to reduce risk or prevent further harm to children. This was exacerbated by the agency’s failure to ensure that staff and foster carers had undertaken the necessary safeguarding training. For example, following information in relation to one child who demonstrated a high risk of going missing, Ms Burchell failed to provide evidence of training or guidance being provided to the foster carers in relation to this risk.

66. HL told the panel that risk assessments are a dynamic process and should be regularly updated and therefore risk remained in relation to the protection of the children. She gave an example a case of a child with a history of substance misuse who was at significant risk of

sexual exploitation. These concerns had not been properly identified and as such no strategy was in place to safeguard them.

67. HL told the panel that she interviewed the foster carer for child L. HL explained that the foster carer did not have a safer care plan for the child and did not understand what HL was referring to by a safer care plan. This represented a failure on behalf of the Agency to ensure that foster carers are provided with accurate information to support the safe care of children in their care.

68. HL told the panel that matching of a child with a foster carer should be carried out by a social worker. The Agency used an unqualified member of staff to match children with foster carers. Ms Burchell told the inspectors that she had completed training on matching 10 years ago and she regarded that as sufficient to do matching. HL told the panel that this was not sufficient as there were newly emerging areas of potential abuse that were not covered in training 10 years ago. A suitable training course can be accessed in three days. Ofsted's expectation is that all Ms Burchell's training, including matching of children to foster carers, should be up to date.

69. HL considered that Ms Burchell should have at least prioritised the protection of the children most at risk, but no action was taken. HL told the panel that she was not assured that Ms Burchell understood the needs of the children placed with the Agency and the risk that they were at. Ms Burchell did not demonstrate the written or verbal knowledge to undertake the role of someone responsible for safeguarding children. HL explained to the panel that compliance with regulation 11 assures Ofsted that the Agency knows how to look after, safeguard and progress the welfare of children.

70. HL told the panel that in the written representations dated 16 February 2018 Ms Burchell had drawn up new safeguarding policies but had not shared these with anyone, therefore they were of no use and the position was the same as it was when the compliance notices were issued. HL told the panel that Ofsted did not consider that the responses by Ms Burchell on behalf of the Agency had given sufficient assurance that she understood safeguarding and had not provided evidence of how the Agency was going to implement the policy. The written representations identified gaps in the care plans on the file of the eight children but the Agency had provided no evidence that steps had been taken to update the safer care plan nor to deal with the matching issues or children' safety.

71. HL told the panel that Ms Burchell did not show any written or verbal knowledge to indicate she was someone who was safeguarding children. Compliance with regulation 11 was important because it concerns the safety of children, so that the Agency knows that the children are being well looked after, progressing well and thriving.

72. HL told the panel that a compliance notice was issued in relation to regulation 12 on 3 November 2017. HL told the panel there was a complete failure to identify incidents of concern or the potential of harm to children. As a result, concerns had not been escalated to appropriate safeguarding agencies so that children could be kept safe from harm.

73. HL stated that the inspection on the 13/14 December 2017 found that the Agency had written a policy but there was no evidence of support groups involving foster carers.

74. HL told the panel that one example of the continued non-compliance concerned a mother with problems of drug abuse and her child who was placed with the foster carer as part of an assessment for ongoing court proceedings. The mother had either borrowed or stolen money from the foster carer. Ms Burchell could not clarify which was the case. There was a significant shortfall in the information relating to this incident. The managers had failed to correctly evaluate incidents or escalated safeguarding concerns. These failings were a contributory factor of the removal of the baby as it was believed the money had been used to purchase drugs. HL told the panel that there had been no updated safer care plans since 2016. HL told the panel that the foster carer would normally keep up a diary for court detailing how the mother is meeting the needs of the baby. HL told the panel that that keeping the diary is skilled work that requires training for the foster care and there was no evidence the foster carer had received training to work with a mother with drug misuse problems.

75. HL told the panel that the written representations by Ms Burchell on the 16 February 2018 did not provide sufficient assurance to Ofsted to confirm that regulation 12 was met: Ms Burchell's proposal to have monthly support meetings was not sufficient. A meeting should have taken place after every incident. There was no evidence of what had changed or what had been implemented. Ms Burchell did not show any accountability as the RI for the Agency's actions that had led to the mother losing her baby. The written representations did not acknowledge that children in its care came to harm.

76. HL told the panel that the Agency was issued with a compliance notice in respect of regulation 17 on the 3 November 2017 because the Foster Carers had very little training provided and when Ms Burchell was asked about this she said that the foster carers were receiving support and seemed to be unaware that they were not receiving training. HL explained that with the small number of foster carers, Ms Burchell should have had a good understanding of their training needs. HL explained to the panel that the responsibility to ensure the training of the foster cares was up to date sat with Ms Burchell as the RI.

77. HL told the panel that during the December 2017 visit, Ms Burchell could not provide evidence of an analysis of training needs. Ms Burchell was asked whether she had undertaken an audit of training to inform the design of a training plan. This was a significant shortfall as the Agency should have prioritised training for foster carers with children who were at the greatest risk and should tailor the training to the needs of the particular child.

78. Ms Burchell said she had developed a training plan but that it was currently in draft form. She said that she could send a copy to Ofsted. HL told the panel she did not see a copy of the policy.

79. HL confirmed to the panel that Ms Burchell stated that she had developed a substantial policy in relation to self-harm but when staff and foster carers were asked whether they had seen the policy; they had not. HL confirmed that she did not see a copy of the plan.

80. HL confirmed to the panel that no up to date safer care plans were in place.

81. HL stated that the training matrix from CHARMS provided accurate data on foster carer training according to the two carers that were checked but there were areas of the training required by National Minimum Standards that were not evidenced as completed. The Agency now had a training matrix and had started to build up a picture of the foster carers training.

82. HL told the panel that Ms Burchell was unable to provide evidence of any personal development plans for the foster carers. Individual personal development plans were required under the compliance notice to identify the training needs of the foster carers and how those needs would be met.

83. HL told the panel that the Agency was found to be non-compliant with regulation 20 which concerned the recruitment and employment of properly trained staff. The Agency was found to be employing an unqualified member of staff to match foster carers and children. Matching is a role that only a qualified social worker is permitted to carry out as they have to assess the skills and competencies of the foster carer and determine whether they are good match for the child.

84. HL told the panel that a mother with drug misuse issues and baby were matched with foster carer who had no training in managing a mother and baby or dealing with drug issues. HL told the panel that the mother had taken money from the foster carer's bank account. It was unclear from the records whether the money was loaned or stolen. Ms Burchell stated the money was stolen although the foster carers intimated that it had been loaned. When the records stating the money was stolen were pointed out to Ms Burchell she ended up saying she did not know the details of the incident.

85. HL told the panel that the inspectors identified members of staff who had not had DBS checks. This included a support worker who was not caring for child but driving a child to and from the foster carer's home.

86. HL told the panel that in the action plan of the 16 February she would have expected it to confirm that the Agency had already completed outstanding recruitment checks.

87. HL told the panel that the inspection of the 2 to 6 October 2017 found the Agency to be non-compliant with regulation 35. HL told the panel that the non-compliance was due to Ms Burchell's failure to analyse how care was delivered and therefore not having adequate oversight.

88. HL told the panel that the audit provided by JW was completed during the inspection. HL described an audit as a tool that demonstrates the progress that a child is making in the agency's care. As part of the audit the RI or registered manager should be speaking to the foster carers, the children, the placing local authority and other stakeholders to demonstrate to Ofsted how the child is making progress and if not, what the Agency is doing to ensure the child is safe. This audit was inadequate. For example, that for the child who self-harmed consists of only two lines with no follow up actions identified.

89. HL told the panel that during the 13/14 December 2017 inspection a quality of care report was produced by Ms Burchell. HL confirmed that Schedule 6 of the regulations requires a monitoring sheet the purpose of which is to improve the quality of foster care and must be sent to Ofsted after consultation with other stakeholders. HL confirmed she saw the quality-of-care report which was assessed as inadequate.

90. HL told the panel that the failure to send the regulation 35 report with the action plan of the 16 February 2018 was a missed opportunity by the Agency.

91. HL confirmed to the panel that the Social Care Compliance Handbook describes the conduct of Ofsted when a provider is in the compliance arena. HL confirmed that the RI was sent a copy of the handbook.

92. HL told the panel that the RI does not have to be a social worker, but if the Agency employs social workers, clinical supervision must be provided and could be outsourced if necessary. Ofsted standards say the RI needs to be in a leadership or social work position.

93. HL confirmed to the panel that the case review has to ask the HMI about whether there should be a DBS referral or to HCPC if it was felt the failure was due to shortcomings by the RI or the Registered Manager as set out in the handbook.

Submission on the facts on behalf of Social Work England:

94. Ms Sharpe made closing submissions to the panel. Ms Sharpe reminded the panel that the burden of proof was on Social Work England to prove the allegations on the balance of probabilities and that Ms Burchell need prove nothing.

95. Ms Sharpe submitted that there is no dispute that Ms Burchell was the RI for the agency from November 2015. SS had confirmed the date and there is documentary evidence before the panel confirming the relevant dates and history that led to Ms Burchell's appointment as RI. Ms Sharpe referred the panel to the relevant documents that confirmed that between the 2 to 6 October 2017 and the cancellation of the Agency, Ms Burchell was the RI. Ms Sharpe submitted to the panel that the provider was a company operating the Agency and the RI is the representative of that company.

96. Ms Sharpe submitted that regulation 8 requires the RI and the Registered Manager to carry on or manage the agency with the requisite care and skill. The RI is jointly responsible with the Registered Manager. The RI is responsible for supervising the management of the Agency. This duty is exercised in interactions with Ofsted. Ms Sharpe referred the panel to the evidence that when the inspection report of 2 to 6 October 2017 was published the post of Registered Manager was vacant and JW although previously working as the manager was never registered.

97. Ms Sharpe submitted that Ms Burchell's role as RI and as a social worker was indivisible. The RI needs to safeguard children. Failure to do so is relevant to her practice as a social worker. As the RI Ms Burchell voluntarily assumed the statutory responsibility for safeguarding

children and keeping them safe. The concerns resulting from her actions as RI cannot be divorced from her practice as a social worker.

98. Ms Sharpe submitted that Ms Burchell as the RI had the responsibility to complete the compliance notices by the relevant date. Both witnesses stated the breaches could be adequately addressed even if not all had been finalised by the 12 December 2017. The panel was told that Ofsted could have taken alternative steps if there had been sufficient compliance. Ms Sharpe's submissions is that the actions taken by Ms Burchell did not adequately address the concerns raised by the compliance notices and as a result children were left at a risk of harm.

99. Ms Sharpe submitted that the panel could not have understood the evidence and factual background to this case without seeing the Ofsted reports. Ofsted have distinct processes and procedural steps which they take for non-compliance with the regulations. Ms Sharpe submitted that as adjudicators the panel should not adopt the Ofsted's adjudication but make their own independent decision as to whether the allegations are proved.

100. HL gave detailed written and oral evidence about what she saw, how information was analysed and assessed. HL told the panel about the missed opportunities for the Agency to obtain the best evidence. HL explained how she and JG analysed the steps taken by the Agency, what was required of a compliance notice , steps taken to interrogate the evidence and why they assessed the Agency as not compliant. HL was acting in her professional capacity which is supported by documentary evidence. Ms Sharpe submitted that it is clear from the toolkits that the actions taken by the Agency when judged against the requirements of the compliance notice were not sufficient.

101. Ms Sharpe submitted that in Ms Burchell's written response to the Notice of Proposal to Cancel, the Agency action plan was an opportunity to address each breach. Ofsted did not consider the action plan sufficient not to cancel the Agency. HL gave evidence of the deficiencies in the action plan. HL gave evidence that the action plan discussed steps to be taken in the future, not steps that had been actioned since the compliance notice or remedial actions to keep children safe.

102. Ms Sharpe submitted that the panel queried the time of 5 months that had been given to respond to the compliance notice but Ofsted's common inspection framework provided for issues to be raised during the inspection visit so that there was no surprise to the agency. Ms Sharpe submitted that some of the issues pre-date the inspection of October 2017 and it does inform the question of whether it understood the regulations. Ms Sharpe submitted that Ms Burchell as the RI and registered professional was required to understand and act within the statutory framework.

103. Ms Sharpe submitted that Ofsted identified various breaches in October 2017 and in the report of the 3 November 2017 identified the requirements and the regulations that were the subject of compliance notices. The date of completion of the 12 December 2017 was the same for all the compliance notices. There was no response to the Social Work England investigation by Ms Burchell. The context of Ms Burchell's written representations was the

notice of proposal to cancel. The Agency's written representations suggested some acknowledgment by Ms Burchell of the breaches identified by Ofsted.

104. Ms Sharpe submitted that JG's toolkit, although hearsay evidence, was contemporaneous with HL's toolkit. She also submitted that the records from foster carers and staff could also be deemed to be hearsay but could be relied on as they were the records generated within the Agency's responsibility and were consistent with other evidence.

105. The panel heard and accepted the advice of the legal adviser:

- The burden of proof rested on Social Work England to prove the allegations on the balance of probabilities and that Ms Burchell need prove nothing.
- The panel should consider the entirety of the evidence received, both written and oral and consider the reliability, accuracy and credibility of the evidence and decide what weight to attach to each piece of evidence that goes to each of the allegations. The panel had regard to Rule 32(c) which provides that "The adjudicator or regulator must first determine any disputed facts".
- The panel had heard and read the evidence that Ms Burchell at the material time was the RI under section 5 (d) of the Fostering Regulations 2011 meaning that she was responsible for oversight and management of the RM and ensuring the agency was compliant with regulations.
- The panel must be satisfied that Social Work England has proved on the balance of probabilities that although it is not a requirement of the Fostering Regulations that the RI is a social worker that Ms Burchell in carrying out that role was subject to the relevant professional regulation of a social worker.
- *Chauhan v GMC [2010] EWHC 2099* held that the panel must confine its finding of fact to the pleaded heads of charge *Farag v GMC [2009] EWHC 2667* held that the panel can only make findings of fact in relation to the allegations set out by Social Work England.
- The panel cannot take into account evidence that does not form the basis of an allegation, *Sharp v Midwifery Council [2011] All ER (D) 231* it is essential to be clear which facts form the basis of the allegations and which are background material only.

    i. Rule 31- Adverse Inference - Where a party fails to comply with these Rules or a case management direction, the fitness to practise panel or the regulator may draw adverse inferences if:

    ii. a prima facie case has been established - this means that Social Work England has presented sufficient evidence to establish the facts.

    iii. the social worker has been warned of the possibility of an adverse inference being drawn from them not attending the hearing (a letter sent to the social worker in advance of the hearing will usually be sufficient)

iv. been given an opportunity to attend or explain why it would not be reasonable for them to do so (a valid proof of service of the notice of hearing will usually be sufficient to demonstrate this)

v. if there are any other circumstances in the case that would make it unfair to draw an adverse inference from the social worker not attending, for example if the social worker is not able to attend due to a health condition.

vi. If the adjudicators decide to draw an adverse inference from the social workers failure to attend the hearing, they should make it clear in their decision on the facts (both of the following):

vii. what adverse inference has been drawn?

viii. why they have drawn this adverse inference.

- The panel heard accepted advice on how it should approach the hearsay evidence.

Decision on the facts

106. The panel heard and accepted the undisputed evidence that Ms Burchell was registered as a social worker between the date of the Inspection by Ofsted on the 2 to 6 October 2017 and the expiry of the notice of decision to cancel issued on 12 April 2018.

107. The panel heard and accepted the evidence put forward on behalf of Social Work England that in accordance with the fostering regulations, was required to appoint a RI who was a director or officer of the Agency who was responsible for supervising the management of the agency. The panel accepted the undisputed evidence of Social Work England that Ms Burchell was a director of the agency and became the RI on behalf of the Agency on 17 November 2015 until the notice of decision to cancel on 12 April 2018.

108. The panel was satisfied on the evidence that Ms Burchell's role as the RI meant she had a duty to safeguard and promote the welfare of children. The panel was satisfied that Ms Burchell as a registered social worker had a responsibility to maintain professional standards which included the safeguarding and protection of children. The panel accepted the evidence of the witnesses SS and HL that after the monitoring visit of 13/14 December 2017 Ms Burchell took on the responsibility of managing the Agency as JW was not regarded as a fit person to be a registered manager. The panel heard and accepted the evidence of HL that Ms Burchell took on the statutory responsibility of matching children with foster carers which is a social work responsibility.

109. The panel reminded itself that it could not understand the evidence and factual background to this case without seeing the Ofsted reports and hearing evidence from witnesses whose evidence was gathered in the course of their regulatory work carried out on behalf of Ofsted. The panel noted that Ofsted has distinct processes and procedural steps to take for

non-compliance with the regulations. The panel considered that the issue in respect of each regulation is whether Social Work England has proved on the balance of probabilities that Ms Burchell in the role of RI fell below the professional standards of a social worker to safeguard and protect the welfare of children.

110. The panel concluded that it would not draw adverse inference from Ms Burchell's non-attendance before it. The panel noted that it had taken a considerable period of time for these proceedings to come to a final hearing and noted the frustration expressed by Ms Burchell in her email of the 4 November 2023.

1.6 Regulation 8 – Registered Person, general requirements.

111. The panel understood that the evidence in the toolkit of JG constituted hearsay evidence. The inspection of the Agency on 13/14 December 2017 had been conducted jointly by JG and HL, who each made their own notes of Ms Burchell's responses to the questions put to her that formed the basis of the inspection report. The panel is satisfied from the oral evidence of HL and consideration of HL's own notes that the notes of JG are contemporaneous with the notes of HL, borne out, in the main by a number of the concerns regarding the compliance notices being identified by both. The panel was satisfied that the notes of JG are not the sole or decisive evidence and was happy to incorporate them into their discussions as hearsay giving them the due weight.

112. The panel heard and accepted that the Agency's compliance with Regulation 8 was a requirement of the 2 to 6 October 2017 inspection report, and that following that inspection, a compliance notice was issued in relation to Regulation 8 with a completion date of 12 December 2017.

113. The panel accepted that on the 2 to 6 October 2017:

- Ms Burchell provided insufficient oversight to ensure that safe care plans were in place for children and that they remained effective to meet their needs;
- Poor case recording had resulted in gaps in information, which could not be explained through discussions with Ms Burchell;
- Foster carers' records lacked detail and failed to provide an accurate picture of children's experiences.
- Ms Burchell's ability to address poor practice was hindered by the weak supervision of staff and foster carers. The agency did not have supervision contracts in place to demonstrate its understanding of the purpose of supervision. Inspectors found that a number of supervision records for staff and foster carers were missing, and those seen by inspectors were of poor quality.
- Serious managerial failures in the oversight of this agency have led to significant failings. Safeguarding issues and poor care practice examples have not been

identified nor addressed. The inaction of leaders raises concerns about their knowledge and ability to fulfil their roles and responsibilities.

114. The panel heard and accepted that the compliance notice set out the required steps to rectify the breach of the regulation with a date for completion of 12 December 2017. These steps included:

- Identify the competencies and skills necessary for the Registered Manager and responsible individual's responsibilities in relation to their management and safeguarding roles.
- Evidence of the registered manager's and responsible individual's understanding of their regulatory roles.
- Conduct a skills audit/training review on the registered manager's and responsible individual's training needs in relation to their regulatory, management and safeguarding responsibilities.
- Ensure the skills audit/training review for the registered manager and responsible individual which evidence the training they have undertaken or any gaps in their knowledge necessary to meet the needs of the children the services support.
- Provide an action plan that identifies any gaps in the knowledge, skills and training of the manager and responsible individual and how any gaps will be addressed. This is to include the dates of the training arranged.
- Ensure that leaders and managers maintain oversight of all aspects of the agency to identify and address shortfalls.
- Ensure that managers, staff and foster carers are provided with regular and good quality supervision.
- Ensure that managers, staff and foster carers understand the aims and objectives of the agency, as set out in the agency's statement of purpose.

115. The panel considered that during the monitoring visit of 13/14 December 2017 the inspectors found that the compliance notice in relation to regulation 8 had not been met in that:

i. Ms Burchell as RI had failed to undertake an appropriate audit in relation to the skills, and gaps in the knowledge, within the leadership and management team.

ii. There were no systems in place to drive improvement, and the agency did not have a development plan.

iii. Ms Burchell did not have a good overview of the service and had little knowledge of actual safeguarding incidents that had occurred.

iv. Ms Burchell's supervision of staff was of poor quality.

116. The panel heard and accepted that Ofsted issued a notice of proposal to cancel on the 26 January 2018 citing an absence of evidence to demonstrate the completion of the required steps detailed within the compliance notice during the December 2017 visit, and concluded that "inspectors found that there has been a failure by the responsible individual to act upon widespread failures across the agency or to address shortfalls in respect of the safety and welfare of children, and make the necessary improvements."

117. The panel heard and accepted the evidence of HL and SS that for significant periods, Ms Burchell had either been in sole day to-day charge of the agency or working with a newly appointed manager who she had failed to supervise. This resulted in the provider's operation of an inadequate service that failed to recognise significant aspects of unacceptable poor practice across a range of areas. The provider failed to provide Ofsted with a sufficient action plan or evidence to demonstrate that the serious weakness in its leadership and management arrangements were either understood or on a journey of improvement.

118. An appointed manager was in post at the full inspection of 2 to 6 October 2017. Serious shortfalls were identified at that inspection which demonstrated that he and the responsible individual were failing to recognise serious repeated safeguarding shortfalls and to take sufficient action. Both individuals failed to demonstrate the required level of knowledge and competence necessary to lead and manage the agency.

119. The appointed manager was unsuccessful at his registration interview on 2 November 2017 and by the time of the monitoring visit of 13/14 December 2017, the agency did not have a manager in post. The agency was being managed on a day-to-day basis by the responsible individual who failed to demonstrate that the compliance notice, issued under Regulation 8(1)(b) had been met.

120. The panel considered that in respect of regulation 8 the issue it had to consider was whether Ms Burchell demonstrated an understanding of the need to audit the progress of the children in the care of the agency and the need for foster carers to have mandatory training. The panel accepted the evidence of HL that Ms Burchell had not made sufficient effort to find out what the appropriate training was for foster carers and how it could be delivered even when asked by HL.

121. The panel considered that Ms Burchell did not have a grasp of what was required as RI to provide oversight and management of the Agency. The panel noted that her responsibilities as RI are set out in the fostering regulations giving the framework for managing the organisation and ensuring the safety of children. It was her duty to understand and meet those requirements and she failed to do so.

122. The panel accordingly found the allegation 1.6 proved.

1.5 Regulation 11 – Independent fostering agencies – duty to secure welfare

123. The panel heard and accepted that the Agency's compliance with Regulation 11 was a requirement of the October 2017 inspection report, with a completion date of 12 December 2017 and that following the October 2017 inspection, a compliance notice was issued in relation to Regulation 11.

124. The panel heard and accepted that on the 2 to 6 October 2017 the following issues were identified by the inspectors:

- A compliance notice was issued in relation to Regulation 11 which required that the welfare of children placed or to be placed with foster parents was safeguarded and protected at all times.
- The inspectors found that there were no strategies or plans in place for how foster carers should help children and found that the foster carers were responsible for children who were at risk of harm without the requisite training or knowledge leaving them ill equipped to help them.
- The inspectors found one young person who was at risk of contacting a perpetrator on the internet. The internet/ social media policy in place to protect this young person was for the foster carer to "turn the router off", they did not have an understanding that the child could use mobile data on their phone. This same young person later harmed herself. The inspector's found that there was no discussion about safety for this young person.

125. The panel heard and accepted that the compliance notice set out the required steps to rectify the breach of the regulation all with a date for completion of 12 December 2017. These steps included:

- Ensure that managers, staff and foster carers have a wider understanding of why children go missing and the associated risks.
- Review all children's risk assessments and safer care plans to ensure that they contain up to date and accurate information about their needs and risks. Keep these under review following any changes to the child's circumstances.
- Ensure that specific risk assessments are carried out in line with guidance for risk factors such as self-harm, suicide and child exploitation.
- Ensure that each child's risk assessment is reviewed after every incident and/or monthly and that staff and foster carers can demonstrate an awareness of the risks and their responsibilities in relation to them.
- Ensure that matching tools consider all the information provided by the placing authority to demonstrate how the potential foster carer is compatible with the child and is sufficiently skilled to meet their needs and safeguard their welfare. Ensure that all matching considerations are reviewed by the manager or an appropriately trained and qualified member of staff.

- Ensure that any gaps identified in the prospective foster carers' knowledge, skills and training are identified and rectified.

126. The panel heard and accepted that the evidence that the inspectors found on 13/14 December 2017 that:

    - Children's risk assessments had not been updated since the last visit. Risk management strategies remained rudimentary and did not provide foster carers with sufficient information about how to reduce risk or prevent further harm to children. This was exacerbated by the agency's failure to ensure that staff and foster carers had undertaken the necessary safeguarding training. For example, despite information in relation to one child who demonstrated a high risk of going missing, Ms Burchell failed to provide evidence of training or guidance being provided to the foster carers in relation to this risk. Risk assessments were not carried out at the point of the child being placed; thus, the foster carers had not been provided with the necessary guidance to keep the child safe. As a result, the agency had failed to fully identify the risks to children, or effectively intervene in order to keep them safe.

    - No risk assessments had been updated and therefore risks were posed to the protection of the children. There was one child with a history of substance misuse who was at significant risk of sexual exploitation. These concerns had not been identified through the matching process and the child was placed with foster carers who had no training on these issues. Ms Burchell should have at least prioritised the protection of the children most at risk, such as this child, but no action was taken.

    - Ms Burchell had drawn up new safeguarding policies but had not shared these with anyone, therefore they were of no use and the position was the same as it was when the compliance notices were issued.

127. The panel considered that the use of unqualified staff to match foster carers and children was unsafe. Matching is a social work function and a very important part of child protection, ensuring the welfare of and safeguarding of children and ensuring their needs are met. The panel considered this was one of the most concerning failures by Ms Burchell. The panel found that adequate matching is a statutory responsibility and pivotal to the protection of welfare of children. The responsibility was on Ms Burchell and the panel considered this a serious failing by her.

128. The panel heard evidence that there were instances of children's assessments which had not been updated since October 2017 and in one instance since 2016.

129. The panel accepted the evidence of HL that developing a matching tool and implementing a good process are different and a matching tool alone is not sufficient. Ms Burchell had managerial responsibility to ensure that these processes were in place and adhered to.

130. The panel accepted the evidence that risk assessments were not adequate and the failure to include foster carers and children in the practice meetings meant that the opportunity to monitor and evaluate whether the plans were working was lost. The panel accepted the evidence of HL that the safer care plans were not updated after incidents.

131. The panel accordingly found allegation 1.5. proved.

1.4 Regulation 12 – Arrangement of the protection of children

132. The panel heard and accepted that the Agency's compliance with Regulation 12 was a requirement of the 2 to 6 October 2017 inspection report, with a completion date of 12 December 2017 and that following the October 2017 inspection, a compliance notice was issued in relation to Regulation 12. The panel heard and accepted that a compliance notice was issued on the 3 November 2017 in respect of regulation 12 that found:

- Failure to recognise the signs and symptoms of specific risk factors had resulted in agency staff not acting on and escalating concerns to protect children. Managers and the staff have not followed their own safeguarding procedures.

- Weak recording has hindered the manager's ability to ensure that issues of concern are dealt with quickly and effectively. The agency has failed to develop and maintain a chronology and evaluation of safeguarding concerns, for example self-harming, going missing and sexual exploitation, for individual children or as a group placed with the agency. Consequently, the agency had not evaluated the effectiveness of its safeguarding procedures to ensure that it was able to take appropriate action to protect the children.

- "Risk assessment and safer care plans are weak and simplistic. They were not updated after significant or concerning events and do not identify risks or protective factors in order to support carers in protecting the children.

133. The panel heard and accepted that a number of steps were required of the agency to rectify the breach of regulation 12 by the 12 December that included:

- Review and update the agency's safeguarding policies and procedures. Evidence when this has been completed, by whom and detail the changes made.

- Ensure that all managers, staff and foster carers have sufficient knowledge of all safeguarding policies and procedures and evidence how their competency has been assessed;

- Ensure that managers, staff and foster carers implement policies and procedures and escalate concerns to appropriate professionals.

- Ensure that detailed records of actions taken in response to safeguarding concerns are kept.

- Ensure that specific risk assessments are carried out in line with guidance for risk factors such as self-harm, suicide and child exploitation.

134. The panel heard and accepted the evidence from HL that though there was a written safeguarding policy in place the Agency relied upon training and support groups to ensure that foster carers were aware of its content. However no support groups or relevant training sessions were conducted in relation to this updated policy. In addition, there remained concerns about safeguarding incidents not being correctly evaluated and with insufficient safeguarding records. The panel accepted the evidence that fresh safeguarding concerns identified during the monitoring visit on 13/14 December 2017 were not adequately addressed by Ms Burchell and that when questioned by HL she was unable to provide an adequate response.

135. The panel heard and accepted the evidence that following the monitoring visit the Agency was not compliant with regulation 12 to the extent that:

    - The reviewed safeguarding policies and procedures had not been cascaded to foster carers and other staff members, rendering these individuals ill equipped to reduce or respond to any prevalent risks to children. The competency of managers, staff and foster carers had not been assessed. Consequently, foster carers continued to lack the necessary knowledge and skills to identify and assess the risks, resulting in failure to implement appropriate safeguarding policies and procedures to protect the children.

    - Children's risk assessments had not been updated since the last inspection.

    - In the case of one child who was at significant risk of sexual exploitation, going missing and self-harming behaviours, the agency's lack of action continued to leave the child vulnerable to further exploitation and harm.

136. The panel heard and accepted the evidence that Ms Burchell had reviewed the safeguarding policies and procedures and there was now clearer guidance that provided information about the processes to keep children safe.

137. The panel heard and accepted the evidence that in Ms Burchell's response to the notice of proposal to cancel she failed to demonstrate how the new policies and procedures had been cascaded to foster carers, staff and those working for the agency, rendering these individuals ill-equipped to reduce or respond to any prevalent risks to children. The panel accepted the evidence that the Inspectors found that insufficient progress had been made in relation to the updating and review of children's risk assessments. The panel accepted that despite Ms Burchell being given the opportunity to conduct a root and branch review of

the Agency's safeguarding policies, procedures and practices, as the Responsible Individual, she was unable to demonstrate at the monitoring visit of 13/14 December 2017, that this serious shortfall had been tackled with sufficient urgency, understanding or skill.

138. The panel accordingly found allegation 1.4 proved.

1.3 Regulation 17 – Support, training and information for foster carers

139. The panel heard and accepted that the Agency's compliance with Regulation 17 was a requirement of the October 2017 inspection report, with a completion date of 12 December 2017 and that following the 2 to 6 October 2017 inspection, a compliance notice was issued in relation to Regulation 17.

140. The panel heard and accepted that on the 2 October 2017 the following issues were identified:

- Poor understanding of the children's risk factors has resulted in the children being placed with foster carers who do not have the knowledge or skills to keep them safe. For example, children who are at high risk of exploitation and going missing have been placed with foster carers who have not received the necessary support and guidance. Training in specific risk factors, such as online safety, is weak and does not inform foster carers of the specific action that they should take to protect children."

141. The panel heard and accepted that a compliance notice was issued in respect of the Agency's non-compliance with regulation 17 on the 3 November 2017. The following was noted within the compliance notice:

- In particular, foster carers were not in receipt of the quality and level of support, training and guidance they needed to provide safe and effective placements for the children placed with them.

- Poor monitoring systems have resulted in managers and staff not having an accurate picture of the training needs of the foster carers. For example, the agency's monitoring provided inaccurate percentage figures for the number of carers who had completed the training, support and development standards for foster carers as well as training in de-escalation and equality and diversity. Discussions with leaders and managers throughout the inspection highlighted that they were unaware that foster carers' training was not up to date.

- Inspectors identified that not all foster carers had completed the necessary mandatory training or the training, support and development standards for foster carers. An examination of individual training records and the training matrix provided by the agency found that:
    - 47% of foster carers have not undertaken training in positive behaviour.

▪ 62% of foster carers have not completed first aid training.
▪ 62% of foster carers have not completed their training, support and development standards.
▪ 80% of foster carers have not undertaken any training in child sexual exploitation including foster carers who care for children who regularly go missing.

- Inspectors found that a number of the foster carers who had not completed core training had been with the agency for a number of years.

- Inspectors were not provided with evidence to demonstrate that foster carers' training needs were discussed or followed up in their supervision meetings. Inspectors requested, but were not provided with, evidence to demonstrate that training attended or completed online had been sufficiently reviewed or discussed with foster carers to examine its impact upon their knowledge and practice.

142. The panel heard and accepted the evidence of HL that at the point the compliance notice was issued on the 3 November 2017 Ms Burchell appeared to be unaware that foster carers were not being provided with training.

143. The panel heard and accepted the evidence that at the monitoring visit of 13/14 December 2017 Ms Burchell could not provide an analysis of training needs. When asked whether an audit of training had been undertaken to inform the design of the training plan, Ms Burchell said that she had designed a draft training plan but that this was in draft form. It was never seen by the inspectors and there was no evidence she had undertaken an audit of the foster carer's training needs.

144. The panel heard and accepted the evidence of HL that the conference for carers cited as evidence that foster carers had received training only lasted from 10am to 2pm and would not have provided meaningful training on matters such as CSE, county lines and self-harming that could have evidenced foster carers had reached the requisite level of competence. The conference was considered insufficient in providing in depth training on these complex issues. The panel heard and accepted the evidence that there was no co-ordination of training , no reflection or analysis of what had been learned by the foster carers and whether it was appropriate to the child placed with the foster carer.

145. The panel heard and accepted the evidence of HL that the action plan of the 16 February 2018 did not demonstrate any adequate assessment or resolution of the inadequacies found and despite these concerns Ms Burchell still lacked understanding of how crucial training for foster carers was and how a lack of training would compromise the welfare of the children and the ability of the foster carer's to safeguard them.

146. The panel accordingly found allegation 1.3 proved.

1.2 Regulation 20 – Fitness of workers

147. The panel heard and accepted that the Agency's compliance with Regulation 20 was a requirement of the October 2017 inspection report, with a completion date of 12 December 2017 and that following the 2 to 6 October 2017 inspection, a compliance notice was issued in relation to Regulation 20.

148. The panel heard and accepted that on the 2 to 6 October 2017 the following issues were identified by the inspectors.

- The inspection report noted that "Unsafe recruitment procedures do not ensure that the staff were suitably vetted and qualified to work with the children."

- inspectors found that the required recruitment checks had not been completed and members of staff had been employed without ensuring that they have the qualifications, skills and experience to provide safe competent care.

149. The panel heard and accepted the evidence of HL that at the monitoring visit of the 13/14 December 2017 the Registered Manager, who had since left, had completed safer recruitment training, and a review of the agency's recruitment policy and procedures had been undertaken. Despite this, no other steps had been taken to remedy the identified failures and un-vetted staff remained employed by the agency. These included support workers, independent assessors, administrative staff, the placement officer, drivers and panel members. This was contrary to the Agency's reviewed recruitment policy and procedures and continued to be in breach of regulations. The panel considered it was a matter of particular concern that a person employed to transport children by car did not have a DBS check, and the evidence obtained demonstrated that the agency did not have documentation detailing this person's legal name.

150. The panel heard and accepted the evidence of HL that matching of children with foster carers is a function that may only be carried out by a qualified social worker The Inspectors found that the Agency was allowing unqualified workers to carry out this function which put children at risk of harm by being placed with carers who did not have the knowledge or skills to keep them safe.

151. The panel considered that it was Ms Burchell's responsibility to ensure that all staff had the appropriate and relevant checks in place as failure to do so would expose the children to a risk of harm.

152. The panel accordingly found allegation 1.2 proved.

1.1 Regulation 35 – Review of quality of care

153. The panel heard and accepted that the Agency's compliance with Regulation 35 was a requirement of the 2 to 6 October 2017 inspection report, with a completion date of 12 December 2017 and that following the October 2017 inspection, a compliance notice was

issued in relation to Regulation 35. The panel heard and accepted that a compliance notice was issued on the 3 November 2017 in respect of regulation 35 that found:

- Previous requirements in relation to the monitoring the quality of care had not been met and there were no systems to drive improvement. The agency has continually failed to submit to Ofsted a review of the quality of care as required under regulation 35. Managers were unable to produce evidence of a quality review or sufficient monitoring systems when requested by inspectors and inspectors found that none of the documents provided by the agency showed consultation with children, foster carers or placing authorities.

154. The panel heard and accepted the evidence of HL that Ms Burchell as RI had failed to develop systems which would have enabled the Agency to monitor the quality of care provided to children and she had not devised an action plan identifying shortfalls and the actions to be taken to address them. The agency did not provide a record of feedback or evidence of consultation with children, foster carers and other stakeholders. The agency did not provide evidence demonstrating a robust overview of service delivery, children's experiences and did not provide evidence of actions taken to improve them.

155. The panel heard and accepted the evidence of HL that Ms Burchell had informed the inspectors that the previous registered manager had not undertaken any file audits, despite requests to do so. She told the inspectors that she undertakes audits of foster carer's and children's files on a quarterly basis, but could produce no evidence to support her assertion.

156. The panel accepted the evidence of HL that the action plan submitted with the written representations did not include the required regulation 35 report although it represented an opportunity for Ms Burchell to provide evidence that she understood the importance of regulation 35 and of having dynamic systems in place to safeguard, protect and ensure the welfare of children.

157. The panel accordingly found allegation 1.1 proved.

Submissions on misconduct and impairment

158. The panel heard oral submissions from Ms Sharpe on behalf of Social Work England and she set out the test for misconduct and submitted that Ms Burchell's conduct had breached the following standards:

HCPC Standards of Performance, Conduct and Ethics (2016):

4. Delegate Appropriately

4.1 You must only delegate work to someone who has the knowledge, skills and experience to carry it out safely and effectively.

4.2 You must continue to provide appropriate supervision and support to those you delegate work to.

6. Manage risk

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

6.2 You must not do anything or allow someone else to do anything which could put the health or safety of a service user, carer or colleague at unacceptable risk.

HCPC Standards of Proficiency for Social Workers (2017):

2 Be able to practise within the legal and ethical boundaries of their profession

2.3 Understand the need to protect, safeguard, promote and prioritise the wellbeing of children, young people and vulnerable adult.

4. Be able to practise as an autonomous professional, exercising their own professional judgment

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

10. Be able maintain records appropriately

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

12. Be able to assure the quality of their practice

12.3 Be able to engage in evidence informed practice, evaluate practice systemically and participate in audit procedures.

14. Be able to draw on appropriate knowledge and skills to inform practice

14.3 Be able to prepare, implement, review, evaluate, review and conclude plans to meet needs and circumstances in conjunction with service users and carers.

159. In addition Ms Sharpe submitted that the panel should consider the requirements of the Fostering Services (England) Regulations (2011) and the National Minimum Standards, which are referred to within the Ofsted reports from inspections and monitoring visits, as well as the compliance notices. She referred the panel to the witness statement of SS where he stated that:

> *"The purpose of the Regulations is to provide a framework for a service to be run which will safeguard the welfare of children that are placed there. If you are breaching the regulations, you are effectively ignoring those safeguards that have been put in place to protect vulnerable children."*

160. Ms Sharpe submitted to the panel that the Agency's failure to comply with the compliance notices in accordance with section 14 of the Care Standards Act 2000 is a criminal offence and is therefore serious. Ms Burchell as the RI had voluntarily assumed responsibility for ensuring the Agency's compliance with the regulations, and was therefore solely responsible for the failure to do so. Ms Burchell's failure to take action to ensure adherence to the compliance notices by the 12 December 2017 is self-evidently serious because of the resultant actual harm and risk of harm to children and therefore it amounts to misconduct.

161. Ms Sharpe submitted that there was a responsibility on Ms Burchell to ensure that the Agency took steps to comply with the regulations when the compliance notices were issued. Failure to do so demonstrates a lack of understanding of the urgency of the safeguarding concerns regarding the children in the Agency's care. Safeguarding children and managing risk is a fundamental tenet of the social work profession. Each failure to comply with the notices meant Ms Burchell was in breach of the HCPC Standards of Conduct, Performance and Ethics (2016), HCPC Standards of Proficiency (2017) as well as the Fostering Service Regulations and was sufficiently serious to amount to misconduct.

162. Ms Sharpe submitted to the panel that a finding that Ms Burchell's fitness to practise is impaired should be made on the grounds of public protection and in the wider public interest. Ms Burchell failed to provide an adequate service as the RI at the Agency which led to multiple serious shortcomings in the quality of care provided to vulnerable children and deficiencies in training and support given to foster carers and members of staff. She should have been aware of the resultant risk to the safety of children but took no action.

163. Ms Sharpe submitted to the panel that Ms Burchell has not demonstrated any meaningful insight, remorse or remediation. In her response of 22 July 2022, she appears to blame the Agency's shortcomings largely, if not exclusively, on the Registered Manager. Ms Burchell has not demonstrated any, targeted or otherwise, remediation of the concerns, notwithstanding that she stated in her earlier response that she had been able to work as a social worker since these concerns were raised. Since the 22 February 2022 Ms Burchell has been subject to an interim suspension order which has prevented her from practising and she now says that she has retired and does not intend to work as a social worker.

164. Ms Sharpe submitted that a finding of impairment is also required in the public interest to uphold and declare proper professional standards for social workers in England and to maintain public confidence in the profession. A well-informed member of the public would

be disturbed to learn that a social worker who had been in the position of RI within the Agency, for some periods, being in sole day to day charge of the Agency, but had not adequately addressed the serious regulatory breaches identified by Ofsted which were her responsibility. Hence, Ms Sharpe submitted that a finding of impairment was required in this case.

Finding and reasons on grounds

165. The panel accepted the advice of the legal adviser that in considering the ground of misconduct it should keep at the forefront of its mind the overarching objectives of Social Work England to protect the public when exercising its functions. In doing so the panel was required to exercise its judgment, and that there was no burden or standard of proof. It must consider whether the statutory ground for findings of misconduct is met. If the statutory ground is met the panel has to decide whether Ms Burchell's fitness to practise is currently impaired by reason of misconduct. To do so, the panel must first consider whether the proved allegations are serious enough to amount to misconduct and if so, whether public protection and public confidence in the profession would be undermined if a finding of current impairment were not made. The legal adviser advised the panel to have regard to the guidance published by Social Work England. The legal adviser referred the panel to the case of *Doughty v GDC (1988) AC 164* in which misconduct was defined as "falling short, by omission or commission, of the standards of conduct expected… and that such falling short as is established should be serious" and the definition of Lord Clyde *in Roylance v General Medical Council [2001] 1 AC 311* "…._some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances."

166. The panel considered the legal advice in respect of the case of *Cohen v General Medical Council,* where Silber J stated that consideration of impairment must take account of the need to protect the individual patient, and the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour. Public interest includes the protection of patients and maintenance of public confidence in the profession. He said that it must be highly relevant in determining if a practitioner's fitness to practice is impaired that first, his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated. In the case of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council, Paula Grant,* Cox J considered that the appropriate test for panels considering impairment of a nurse's fitness to practise, which would be equally applicable to other regulated health practitioners would be helped by the test formulated by Dame Janet Smith in her Fifth Shipman Report, namely:-

> "Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

i. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

ii. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

iii. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

167. In respect of misconduct, the panel concluded that the proved facts of the allegation amounted to a breach of the following Health and Care Professions Council, Standards of Conduct, Performance, and Ethics (2016), namely the following elements:

4. Delegate Appropriately

4.1 You must only delegate work to someone who has the knowledge, skills and experience to carry it out safely and effectively.

4.2 You must continue to provide appropriate supervision and support to those you delegate work to.

6. Manage risk

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

6.2 You must not do anything or allow someone else to do anything which could put the health or safety of a service user, carer or colleague at unacceptable risk.

168. Further the panel considered that the proved facts of the allegation amounted to a breach of the HCPC Standards of Proficiency (2017), namely the following elements:

2 Be able to practise within the legal and ethical boundaries of their profession

2.3 Understand the need to protect, safeguard, promote and prioritise the wellbeing of children, young people and vulnerable adult.

4. Be able to practise as an autonomous professional, exercising their own professional judgment

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

10. Be able maintain records appropriately

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

12. Be able to assure the quality of their practice

12.3 Be able to engage in evidence informed practice, evaluate practice systemically and participate in audit procedures.

14. Be able to draw on appropriate knowledge and skills to inform practice

14.3 Be able to prepare, implement, review, evaluate, review and conclude plans to meet needs and circumstances in conjunction with service users and carers.

169. The panel was therefore satisfied that the allegations found proved amounted to a serious failure to adhere to the standards expected of someone in Ms Burchell's position as an experienced social worker. Ms Burchell breached the fundamental tenet of safeguarding children. The compliance notices should have been a significant and urgent concern for Ms Burchell as children were put at risk some of whom did ultimately come to harm as a result of her failure to take the steps necessary to ensure compliance.

170. The panel was satisfied that Ms Burchell's failure to ensure the Agency met the requirements of the compliance notices in accordance with section 14 of the Care Standards Act 2000 is a criminal offence and breached regulations enshrined in law for the protection of children which the panel regard as serious and amounts to misconduct.

Finding and reasons on current impairment

171. Having determined that the proved facts amount to misconduct, the panel considered whether Ms Burchell's fitness to practise is currently impaired.

172. The panel considered that the evidence of Ms Burchell's lack of understanding of the seriousness of her failure to safeguard children and her inability to manage the risks was so pervasive it is difficult to envisage it can be easily remedied. The panel noted that Ms Burchell appears to have not worked as a social worker since April 2020 and has informed Social Work England that she does not wish to remain on the register. The panel further noted that Ms Burchell has been subject to an interim suspension order since February 2022. Nonetheless, the panel has not seen evidence from Ms Burchell that demonstrates she has acquired the understanding, skills and knowledge to recognise the gravity of the concerns identified by Ofsted. She has taken no steps to remedy the deficits through training, reflection and has produced no testimonials. In her response of 22 July 2022 to Social Work England she appeared to blame the Agency's shortcomings largely, if not exclusively, on the Registered Manager. It is clear to the panel that Ms Burchell does not currently have a proper understanding of the necessity of the requirements to safeguard vulnerable children.

173. The panel considered that there is no evidence that Ms Burchell has developed insight into the impact her failings had on foster carers and children. The panel noted the difficult personal circumstances of Ms Burchell but considered if this was having an impact on her

work to the degree that she was unable to properly fulfil her role, it was her responsibility as a social worker to remove herself from the role and seek alternative support for the Agency until such time as she could safely return to practice.

174. The panel found that Ms Burchell's failures placed vulnerable children at an unwarranted risk of harm. Her misconduct relates to failings in a core obligation as a social worker, namely, to safeguard children. The panel found that Ms Burchell is personally impaired as her lack of insight and lack of remediation means there is high risk of repetition of the misconduct.

175. In determining whether Ms Burchell is currently impaired the panel had regard to the questions posed by Dame Janet Smith in her fifth Shipman report endorsed in the case of Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant [2011] EWHC 927 Admin. In light of its findings on misconduct the panel concluded that Ms Burchell, has in the past and is liable in the future to:

- act so as to put children at unwarranted risk of harm;
- bring the profession of social work into disrepute;
- breach fundamental tenets of the social work profession.

176. The panel was satisfied that a finding of impaired fitness to practise is necessary to protect the public, particularly vulnerable children. The failure of Ms Burchell to safeguard children and her breach of the six compliance notices brings the profession into disrepute.

177. Further, the panel, in considering the public component of Ms Burchell's fitness to practise finds that reasonable, well informed, members of the public would be shocked to learn of Ms Burchell's failure to protect children by ensuring the Agency met the compliance notices whose primary purpose is to safeguard and protect children. The panel therefore concluded that a finding of impaired fitness to practise is also necessary to uphold professional standards and maintain and promote public confidence in the social work profession.

Submissions on sanction

178. Ms Sharpe on behalf of Social Work England, submitted that, considering the nature of the misconduct, the appropriate and proportionate sanction was a removal order. She argued that such a sanction is the minimum required to adequately protect the public and the wider public interest, considering the severity of the misconduct.

179. Ms Sharpe reminded the panel of its conclusions as to remediation, insight, and risk of repetition.

180. Ms Sharpe submitted that the aggravating features of the case were that Ms Burchell had not demonstrated insight, was an experienced social worker at the time of the misconduct and there is a risk of harm. Ms Sharpe noted in mitigation that Ms Burchell had no previous fitness to practise history with Social Work England and at the time had difficult personal circumstances.

181. Ms Sharpe submitted that it was necessary to impose a sanction that restricted Ms Burchell's practice, as nothing else would adequately protect the public.

182. Ms Sharpe noted that Ms Burchell had applied for voluntary removal from the register and noted the panel's conclusions in respect of remediation and insight. Ms Sharpe argued that a removal order was the most appropriate outcome and that a suspension order would not be appropriate, on the basis that this would not sufficiently mark the seriousness of the concerns.

Decision and reasons on sanction

183. The panel accepted the advice of the legal adviser, that it must have in mind the overarching objective of Social Work England when exercising its functions. The panel must apply the principle of proportionality, balancing Ms Burchell's interests with the public interest. The purpose of a sanction is not to be punitive, although a sanction imposed may have a punitive effect. The panel should consider the least restrictive sanction first, and only if this does not provide adequate protection of the public, consider more restrictive sanctions as appropriate. The panel should have regard to the Social Work England Impairment and Sanctions Guidance, published in December 2022.

184. In respect of the aggravating factors of this case, the panel considered that Ms Burchell was given clear information and guidance from Ofsted which she failed to put into practice over a 2 year period.

185. The panel considered the mitigating factors in this case.

- **[PRIVATE].**
- Ms Burchell had no previous regulatory history.

186. The panel took into account Ms Sharpe's submissions and referred to the Social Work England Impairment and Sanctions Guidance 2022. It accepted the advice of the legal adviser. The panel bore in mind that the purpose of sanction is not to punish Ms Burchell but to protect the public, maintain confidence in the social work profession and uphold proper standards of conduct and performance. The panel is also cognisant of the need to ensure that any sanction is proportionate.

187. In ascending order the panel considered taking no action, giving advice or issuing a warning order. The panel noted the seriousness of the misconduct and the fact that it had determined that Ms Burchell posed an ongoing risk to the public should she be allowed to practice with restriction.

188. The panel considered that Ms Burchell has not demonstrated meaningful insight, nor remedied the deficiencies in her practice. She had informed Social Work England that she had retired from practice and would not be working as a social worker in the future. The panel considered that a conditions of practice order would not reflect the seriousness of her misconduct and that any conditions, if they could be formulated, would have to be so

wide ranging as to amount to a suspension. There is no evidence before the panel that Ms Burchell would comply with conditions even if they were considered appropriate.

189. The panel noted that a suspension order may be the appropriate sanction where workable conditions cannot be formulated. The panel considered that a suspension order would not be appropriate as Ms Burchell has not demonstrated any insight and remediation. The panel understands that Ms Burchell has asked for removal from the register and therefore there is no evidence to suggest she is willing to resolve or remedy any failings.

190. The panel decided that the proportionate outcome is a removal order. Ms Burchell has shown a persistent lack of insight into the seriousness of her actions and the consequences. The panel considered that during the five years since the closure of the Agency Ms Burchell has failed to remedy her shortcomings and made it clear she does not wish to practice as a social worker in the future.

191. The panel has therefore decided to impose a removal order in this case as the only appropriate sanction.

Interim order:

192. In light of its findings on sanction, the panel next considered an application by Ms Sharpe for an interim suspension order to cover the appeal period before the final order becomes effective.

193. The panel next considered whether is was necessary to impose an interim order. It was mindful of its earlier findings and decided that it would be wholly incompatible with those earlier findings if an interim order was not made.

194. Accordingly, the panel has decided that an interim suspension order is necessary for the protection of the public. When the appeal period expires this interim order will come to an end unless an appeal has been filed with the High Court. If there is no appeal, the final order of removal shall take effect when the appeal period expires. The panel makes the interim suspension order for a period of 18 months to protect the public should Ms Burchell appeal.

Right of appeal:

195. Under Paragraph 16(1)(a) of Schedule 2 of the regulations, the social worker may appeal to the High Court against the decision of adjudicators:

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

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

196. 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.

197. 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.

198. 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:

199. 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

200. 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:

201. 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.