Social worker: Andrew Peter Hill
Registration number: SW27372
Fitness to Practise
Final Hearing

Dates of hearing: 27 July 2023 to 02 August 2023

Hearing venue: Social Work England, Remote hearing

Hearing Outcome: Warning order 3 Years

Introduction and attendees:

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

2. Mr Hill attended and was represented by Mrs Wendy Hill.

3. Social Work England was represented by Ms Louise Atkin, case presenter from Capsticks LLP.

Adjudicators	**Role**
Karen McArthur	Chair
Suzanna Jacoby	Social worker adjudicator
Lynne Vernon	Lay adjudicator

Jenna Keats	Hearings officer
Natarliya James	Hearings support officer
Gerry Coll	Legal adviser

Preliminary matters:

4. Rule 40 of the fitness to practise rules 2019 (as amended) (the rules) provides for representation on behalf of a social worker as follows:

   At a hearing the registered social worker may be represented by:

   (a) a solicitor or barrister registered in the UK, or a Chartered Legal Executive;

   (b) a representative from any professional organisation of which the registered social worker is a member; or

   (c) at the discretion of the regulator or adjudicators conducting the hearing, as the case may be, a member of the registered social worker's family or other suitable person.

5. Mr Hill wished to be represented by his wife. It was confirmed that Mrs Hill was not intended to be a witness. Ms Atkin, on behalf of Social Work England, did not object. The panel decided to exercise its discretion to allow that Mrs Hill could represent her husband under rule 40.

6. The panel was provided with the following documents:

   - 1.1 Hearing timetable
   - 2.1 Statement of case, Social Work England; 22 pages

- 3.1 witness statements bundle: 43 pages
- 4.1 exhibits bundle: 868 pages
- 5.1 social workers response bundle: 43 pages
- 6.1 service bundle: 16 pages.

Allegations:

7. The allegation arising out of the regulatory concerns referred by the Case Examiners on 16 December 2021 is:

While registered as a social worker in or around September and October 2020, you:

1. Did not adequately permit and encourage one or more of the service users identified in Schedule 1 to participate in a Deprivation of Liberty (DoLS) assessment you were undertaking in respect of them.

2. Completed a DoLS assessment in respect of one or more of the service users identified in Schedule 1 which was inadequate, in that you did not sufficiently identify and/or reflect within your assessment: - a) the wishes and feelings of the service user;
   b) the particular circumstances of the service user.

Your actions at 1 and/or 2 above amount to misconduct

Your fitness to practise is impaired by reason of misconduct.

Schedule 1
Service User A
Service User B
Service User C
Service User D

Admissions:

8. Rule 32(c)(i)(aa) states:

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

9. Following the reading of the allegations the panel Chair asked Mr Hill whether they admit any of the allegations and whether they admit that their fitness to practise is currently impaired.

10. Mr Hill informed the panel that they admitted allegations 1 and 2.a.

11. The panel therefore found allegations 1 and 2.a proved by way of Mr Hill's admissions.

12. The panel noted that Mr Hill denied allegations 2.b and that his fitness to practise is currently impaired.

13. In line with rule 32(c)(i)(a), the panel then went on to determine the disputed facts.

Summary of evidence:

14. The witnesses relied upon by Social Work England and Mr Hill were:

    i) Social Work England;

        1) BSF, former Strategic Service Manager for Hampshire County Council (the Council);

        2) JM, Service Manager for Mental Capacity and Deprivation of Liberty in Adults Social Care at the council;

        3) MH, Registered General Nurse Deputy Manager with the council;

        4) TF, Registered Manager, Care Home A

        5) KO, Assistant Unit Manager at Care Home B;

        6) JS, Registered Nurse, Care Home C;

        7) SK, Assistant Head of Care in Long Stay Services for the council.

    ii) Mr Hill;

        1) Mr Hill gave evidence on his own behalf.

15. Mr Hill has been a registered social worker since 2005. In 2014, Mr Hill qualified as a Best Interest Assessor (BIA). In 2020, Mr Hill was working as an independent BIA. At that time, the

Coronavirus pandemic made it necessary for face to face contact with persons outside of an individual's household to be substantially restricted, legally.

16. Certain service users who are resident in local authority care homes require specialised care and services which is provided under deprivation of their normal liberty to, among other things, leave the care home. This can be done lawfully when the service user is subject to a Deprivation of Liberty Order (order) under the Mental Capacity Act 2005 (the 2005 Act). The 2005 Act provides for Deprivation of Liberty Safeguards assessments (DoLS) to be made by a suitably qualified registered social worker such as a BIA before a lawful order can be made.
17. A service user will require a DoLS assessment if they are judged to

    - lack capacity,
    - are not free to leave their care home and
    - are under supervision and control.

    The relevant local authority such as the council will receive a 'Form 1' submitted by the care home informing the council of an intention to deprive the service user of their liberty. At that point the necessity for a safeguards DoLS assessment is triggered.

18. When undertaking a DoLS assessment, Mr Hill was required to compete three assessments including Best Interest Assessments.

19. Mr Hill was required to adhere to the guidance supplied by the relevant local authority, such as the council. The guidance from the council included the Additional Guidance to Independent Best Interest Assessors during Covid-19 (addendum to the Guide for Independent BIAs) dated 21 May 2020.

20. Once a care home has submitted 'Form 1' (which notifies the council that a service user is being deprived of their liberty), a BIA is required to complete three of the assessments which form part of the overall DoLS assessment, including a Best Interest Assessment.

21. On 26 October 2020, Social Work England received a referral from BSF, Strategic Service Manager at Hampshire County Council (the council) regarding Mr Hill.

22. Mr Hill was then an independent/self-employed Best Interests Assessor (BIA), who had been engaged by the council to complete Deprivation of Liberty Safeguards (DoLS)) assessments from approximately May 2020.

23. On or around 6 October 2020, BSF reviewed a DoLS assessment which had been completed by Mr Hill on 18 September 2020. BSF considered that there was a lack of personalisation within the assessment. An assessment that might result in a decision respecting an individual service user being deprived of their liberty requires the assessor to understand and explain the service user's current circumstances, preferences, and risks to their safety, among other things. The assessment must be specific for that individual. The council must always act lawfully, including maintaining respect for service users' individual human rights. The assessment must therefore be 'person centred'. BSF was at that time employed as a

senior management social worker and her responsibilities included acting as an authoriser for DoLS assessments submitted by contracted external BIAs such as Mr Hill. BSW spoke to Mr Hill about her concerns in this regard, having read the assessment Mr Hill agreed to update the assessment and send it back.

24. BSF subsequently reviewed three other assessments completed by Mr Hill on 4 and 5 October 2020. She was again concerned by the lack of personalisation in the assessments. This posed a risk for the service users whose liberty might be infringed disproportionately or wrongly. There were also risks for the council if the assessment were later to be challenged as being inadequately justified and supported. BSF's concerns included the extent to which the assessments were markedly similar despite relating to different service users who were residing in different care homes and all with evidently different person circumstances and needs, based on the council's own records.

25. BSF subsequently undertook checks with staff at the care homes where the relevant service users were resident. Information supplied by Mr Hill with the DoLS suggested that he had spoken with staff, but BSF was concerned that there was a lack of evidence to demonstrate that he had consulted with the service users themselves.

26. Mr Hill admitted the facts of head of allegation 1 and of limb 2.a). He disputed only the facts of limb 2.b).

27. In response to Case Management Directions issued prior to the hearing, Mr Hill confirmed the admissions and also that his fitness to practise had been impaired at the time, although not currently impaired.

28. In respect of head of allegation 1, Mr Hill's response included that:

"*I tried to speak with all of the service users however, for whatever reasons, the service users were busy doing something else*";

29. In respect of limb 2.a):

"y*es these assessments were not very good, had I been charged with undertaking the capacity assessments then there would be more substance to them*".

30. In regard to limb 2.b);

"t*he particular circumstances were that all of the service users met the criteria for the deprivation of liberty safeguards, the acid test*";

31. Mr Hill admitted that the facts accepted by him amounted to misconduct. He responded:

"a*ssessments may have been able to be put right if my belligerent response to BSF's patronising tone had not made things worse. I am sincerely sorry that I could have done much better and also spoilt what is otherwise clean slate* [sic]. *[PRIVATE]*";

[he had] "*used a template which I adjusted to each individual*" and that "*often, circumstances for an individual within a care setting are very similar and even without a template, statements used can be similar for all professionals in recordings*". He went on to say that factual inaccuracies can occur, especially when obtaining information over the phone.

32. On 24 June 2021 Mr Hill commented in his written response that while the assessments he completed "*could have been a* [sic] *better quality*", they were "*completed following HM Government guidance as well as HCC's additional guidance*". He went on to say that "*while I believe the assessments were not of a high standard, the acid test in that the person's 'lacked capacity, they were under constant supervision and control and not free to leave' were met*" and that "*no one was harmed as a result of my poor assessments nor were they unlawfully detained as implied by BSF*".

33. Mr Hill did not contest that his fitness to practise had then been impaired as a consequence of his admitted misconduct. He stated that his fitness to practise was:

    "…*[PRIVATE]*".

34. Mr Hill did not accept that his fitness to practise is currently impaired and stated.

    "*I find the use of the word is impaired quite offensive, considering I'm still practising and the event was three years ago*".

35. Mr Hill did not accept limb of allegation 2.b) because he disputed that he did not speak to the respective service users as part of the assessments conducted by him. He stated that he had not retained evidence of his contacts with the respective service users because he has a practice of shredding and disposing of contemporaneous notes. Accordingly, he was unable to recall the detail of the questions that he had asked and the specific responses that he had received. He indicated that one service user was unable to communicate and that he therefore spoke to the staff member "*who indicated that the person was fine and not objecting* [to the DoLS]. Mr Hill said that in respect of another service user that the assessment did not happen when initially planned (which he believes was due to the service user being asleep). A subsequent assessment could also not be completed. He again stated that he spoke to a staff member and "*used the information already gathered and available to me on which to base my decision*". He stated that this is not something he has done before or since and that in hindsight "*I know I should have contacted Hampshire DoLS Team and explained I had been unable to complete the assessment in the timescale*". Mr Hill stated that he did speak directly with the service users with respect to two of the assessments.

    <u>BSF</u>

36. BSF said that a service user will require a DoLS assessment if

    - they lack capacity,
    - are not free to leave their care home and

- are under supervision and control.

Once a care home has submitted 'Form 1' (which notifies the council that a service user is being deprived of their liberty), a BIA is required to complete three of the assessments which form part of the overall DoLS assessment, including a Best Interests assessment. In the council's processes, the BIA is not required to conduct the capacity assessment which instead is completed by an appointed medical doctor, the 'MHA'.

37. Form 1 requires the BIA to confirm as part of the assessment that they have "*considered and taken into account the views of the relevant person*", and additionally that they have "*considered what I believe to be all of the relevant circumstances and, in particular, the matters referred to in Section 4* [of the 2005 Act].

38. BSF said that Section 4(2) of the 2005 Act provides that for the purposes of determining what is in a person's best interests, the person making the determination must consider all the relevant circumstances and in particular the other matters specified in Section 4.

39. This includes a requirement at Section 4(4) to

"*so far as reasonably practicable, permit and encourage the person to participate, or improve his ability to participate, as fully as possible in any act done for him and any decision affecting him*".

At Section 4(6)(a) the BIA is expected to consider

"*so far as reasonably ascertainable the person's past and present wishes and feelings*".

40. The council has guidance for independent BIAs such as Mr Hill. This provides at Paragraph 65 of the Code that

"a *person trying to work out the best interests of a person who lacks capacity should* [...] *do whatever is possible to permit and encourage the person to take part, or to improve their ability to take part, in making the decision*".

41. There is further guidance in the Deprivation of Liberty Safeguards Code of Practice which deals with the assessment process. At paragraph 4.69, the Code states that

"*the best interests assessor must involve the relevant person in the assessment process as much as is possible and practical and help them to participate in decision-making*".

42. BSF explained that the council issued additional guidance to assist BIAs produced on 21 May 2020 to explain how the assessments should be arranged and undertaken while the government COVID-19 pandemic restrictions remained in force. BIAs should visit the 'Managing Authority' (i.e. the care home) and should "m*eet/speak with* [the service user] *to gain their views regarding the arrangements for their care*" (Exhibit BSF03, E22). The 'COVID-19' additional guidance provided that no face to face visits were to be undertaken by BIAs during the pandemic restrictions, and that remote assessment should be used as the primary source of information. The additional guidance sets out that "*a service user's own*

communication needs must be considered when deciding whether and how to arrange a call".

43. BSF said that the information pack confirms that remote assessment of the service user is the primary source of information, while identifying sources of supplementary information. One example provided of supplementary information is that:

"i*f either the BIA or MHA has been successful in remote assessment, views can be obtained/used by the other assessor*".

44. BSF also exhibits guidance which was produced by the government during the COVID-19 pandemic (updated on 7 September 2020). This sets out that in making a bests interests decision, the decision-maker should consider all relevant circumstances, "*ensuring participation if reasonably practicable*" and considering "*the person's past and present wishes and feelings, and beliefs and values that would be likely to influence their decision*". Further, "w*here appropriate and relevant, current assessments can be made by taking into account evidence taken from previous assessments of the person. The assessor undertaking the current assessment must make a judgement on whether the evidence from the prior assessment is still relevant and valid to inform their current assessment. If this information is used to support the current assessment or review, this should be noted and referenced. Alternatively, if the assessment was carried out within the last 12 months, this can be relied upon without the need for a further assessment."* However, BSF explained that the council would not have been happy with that approach as DoLS is an annual assessment and that would have been the council's expectation.

45. BSF said that the four service users identified in Schedule 1 were not renewals of DoLS but were first assessments.

46. BSF said that BIAs and social workers have a '…*duty of care when we assess service users to personalise the assessment. This is to ensure that the best interests of the service users are identified. Time should therefore be taken for the service user to express their view and protect their rights*'. The service user has a right to express their views. The only exception is where the service users is already known to be *non-communicative and cannot communicate their views.* In ordinary circumstances, *the BIA may be the only external professional contact that person has. The* impact on service users if they are not interviewed and accordingly are deprived of an opportunity to express their view is that "*unknowingly to the council and the service user, the service user's rights have not been upheld.*

47. BSF supported her views that there was an absence of personalisation in the assessments for the service users in Schedule 1. She took the panel to the assessments completed for the service users which failed to identify the individual circumstances of each service user. She said that she felt that she did not know the individual service users as a result of reading the assessments. They were generic, and surprisingly identical in detail for each of the service users. However, each service user had different abilities to self-manage and different needs

to support their care and mobility. BSF would have expected each assessment to reflect the individual lives and circumstances of the service users to ensure that any decision made based on the assessment was one that was proportionate, lawful and was in the service user's best interests. Any restriction on liberty which was excessive or disproportionate was a breach of the service users' human rights, among other things.

TF

48. TF was the Registered Manager of Care Home A. She was responsible for 60 residents and approximately 90 staff members.

49. TF's evidence related to Mr Hill's opportunities to contact and obtain the views of the respective service users.

50. TF explained that during the Covid 19 pandemic, arrangements would be made for a BIA to have a telephone discussion with the service user, supported if necessary by a staff member. Ms Hill checked the home records in relation to service user D. In the communication book, a note was made that Mr Hill would call at 10:30 AM [PRIVATE] September 2020. However, the note observed that Mr Hill did not call. TF did not have a policy of deleting emails relating to DoLS assessments. She could not find any emails from or to Mr Hill.

51. Service user D was now deceased. TF remembered them as being a very funny and engaging person whose presentation depended on their mood and disability. On many days, service user D was happy and focused on their passion for handbags. Service user D however began to deteriorate due to health and cognition issues, and accordingly a DoLS assessment referral was initiated using form 1.

52. TF observed that during the Covid 19 pandemic, there was no external access to the care home. Records of contact with service users would have been made, and the deprivation of liberty folder for the service user would have been noted. TF observed that a BIA Assessor would require support from a staff member. She did not think there was any real possibility that contact by a BIA Assessor with the service user would have occurred without an appropriate record being noted. TF supported a subsequent BIA assessment by a different assessor completed in November 2020. Records of the relevant contacts were made. TF said that she was fairly sure that the system was good and discounted the possibility of contacts not being recorded and falling through the net.

Mr Hill

53. Mr Hill gave evidence on his own behalf.

54. Mr Hill maintained the admissions that he had already made.

55. Mr Hill explained that in 2016, having worked successfully as a social worker specialising in mental health and in substance misuse he had managed an outreach forensic mental health team. In 2016, [PRIVATE] and he had decided to work as an independent locum social worker, which he has done ever since.

56. Mr Hill explained that different local authorities had different practices within the pandemic restrictions. He worked for a number of councils but not often for Hampshire Council. Prior to the pandemic, he had worked without issue completing BIA assessments for a number of local authorities having conducted face to face interviews and completing the assessments at home.

57. In 2020, he was contacted by the council and asked to complete a one-off assessment, which he had done successfully. There was no feedback for him on his assessment. This was unusual. Normally, local authorities will ask for one or two examples of redacted work to supplement his appointment, as a quality assurance measure. This was not the case with Hampshire Council.

58. Mr Hill explained that instructions in relation to the four service users mentioned in Schedule 1 were received by email asking him to undertake virtual assessments. An unusual feature was that he was not also required to complete a capacity assessment, which in these cases was done by an MHA. As with his normal practice, a lot of the work that he undertook was done on the phone. Mr Hill said that the quality or amount of support given to him by care home staff depended on which staff member had spoken to him. BSF was the second authoriser he had contact with at the council. The first had no issues and had authorised his assessment.

59. Mr Hill explained that his starting point was that his BIA assessments were not needs assessments or care act assessments. They are about restrictions on liberty and how they impact on the person being deprived of their liberty. Mr Hill explained that assessments begin with capacity and he found it strange that the council undertook capacity assessments before making a referral on form 1. Mr Hill explained that Deprivation of Liberty Safeguards were more than confinement to a particular home, unless accompanied. This extended to physical constraints such as bed wedges and safety sensor mats to alert staff to a service user's movements if they were prone to falls. Medications may also be restrictions on liberty.

60. In respect of the assessments, Mr Hill explained that he had rushed them. His health was not good at this time. Mr Hill pointed the panel to the additional guidance provided by the council relating to assessments conducted during Covid 19 restrictions. In Mr Hill's view, it contradicted the general guidance outside of Covid 19 restrictions and it did not mandate, as a result, that personal contact be made by him with the service user. In Mr Hill's view, the guidance allowed him to complete assessments using supplementary records and notes in relation to the service user.

61. Mr Hill disagreed that his views were identical in relation to the four service users, although they may superficially appear to have similarities. He accepted that, had he not been in a rush, the details would have been more fully completed. The general statements applied to very many service users in a BIA assessment. Mr Hill accepted that in contrast with his assessments, a subsequent social worker had been much more detailed in a service user's expression of views. In contrast with Mr Hill's assessment that the individual was largely dependent on others, a subsequent social worker had assessed that the service user

"…would like to keep their independence as long as they can. They should be encouraged to do as much as possible. They can wash their own face and hands of prompted and given wet flannels."

62. Mr Hill observed that this may well have been a perfectly valid observation in relation to the service user on the day of assessment. The service user may well have presented to him entirely differently on the day of his assessment. "Assessments can change", Mr Hill said, "and the assessment is only good for the particular day of assessment, except for mental capacity."

63. Mr Hill accepted that in relation to one service user who was subsequently observed to required 2:1 support, that fact should have been mentioned by him in his assessment. Mr Hill said that he "hold my hand up to doing some poor assessments."

64. Mr Hill did not accept that in relation to another service user who was noted to require 1:1 personal care, has accidents and required staff to check and change the service user when necessary, that he needed to reflect those facts in his assessment. Mr Hill explained that this was not part of the DoLS assessment process which is not a needs assessment. His assessment looked with a particular focus of deprivation of liberty and concentrated in person's capacity. However, Mr Hill accepted that his assessments could have been better.

65. The panel accepted the advice of the legal adviser. He reminded the panel that the burden of proof rested always with Social Work England and that the standard of proof is the civil standard of the balance of probabilities. The panel must be satisfied that the contemporary documents relied on by Social Work England were accurate and reliable.

Finding and reasons on facts:

66. In accordance with rule 32(c)(i)(aa) which provides that where facts are admitted by the social worker:

67. '*…the adjudicators or regulator shall find those facts proved*'

68. The panel found that head of allegation 1 and limb of allegation 2.a) were proved by admission.

69. In respect of limb of allegation 2.b) the panel first considered the contemporary documents produced by Social Work England, including Mr Hill's assessments and those assessments completed subsequently by other BIAs for the service users referred to in Schedule 1.

70. The panel was satisfied that the documents appeared to be authentic and uncontaminated. They showed the entries made by Mr Hill and by the subsequent BIAs.

71. The panel was satisfied that the guidance including the additional guidance issued by the council in respect of Covid 19 pandemic restrictions was unambiguous, contrary to the view expressed by Mr Hill. In particular, the additional guidance requires that Mr Hill as a BIA was

required to report on the particular circumstances of the service user. This was not an expression that required an interpretation outside of its ordinary meaning. The expression required that each individual service user's difficulties, how they were being cared for in their understanding and wishes in respect of the assessment should be identified, addressed, and recorded. It was not sufficient that generalised statements applicable to almost every service user could be used. The panel considered that that could not be regarded as a personalised assessment and was not person-centric.

72. The subsequent BIA's assessments in respect of the service users illustrated the individual differences between the service users' individual lives, difficulties, and aspirations. In the panel's view, Mr Hill's assessments fell far short of what was sufficient in the circumstances.

    The panel did not accept Mr Hill's view that the detailed and personalised better assessments were no more than a reflection of the service user's presentation on the day of assessment. Mr Hill's approach, using acknowledged generic phrases to describe each service user in remarkably similar terms did not meet what was expected of Mr Hill as the BIA.

73. The panel was satisfied that Mr Hill's assessment did not satisfy the requirement that they were adequate in order to identify the particular circumstances of the service users in Schedule 1. Mr Hill accepted in his evidence that in retrospect, he had misinterpreted the council's Covid 19 guidance.

74. Mr Hill's approach to identifying and reflecting the particular circumstances of the service users was at variance with the person centred assessment of the individual. Mr Hill was plainly rushing the BIA process as he admitted. This was contrary to the central point of the assessment which would place the individual service user at the centre of the assessment, reflecting their needs and risks individually. Mr Hill appears to have relied on the MHA's assessments and not to have exercised his own professional judgement and assessment.

75. The panel was satisfied that limb 2.b) was proved.

Finding and reasons on grounds:

Submissions by Social Work England

76. Ms Atkin invited the panel to find that as a consequence of its findings of fact, it should find that the grounds of impairment in Mr Hill's case, misconduct as set out in regulation 25(2), were established. Ms Atkin reminded the panel that the impairment and sanctions guidance last updated 19 December 2022 states that decisions should be fair and consistent. A finding that the statutory grounds were established would be consistent with the panel's findings above that Mr Hill had acted

    - contrary to his obligations as a BIA under the 2005 Act, and
    - contrary to the standards that bound him as a social worker.

Mr Hill had acted so as to breach Social Work England's Professional Standards.

77. Mr Hill had admitted that his actions amounted to misconduct. There was no evidence of actual harm to any of the service users identified in Schedule 1. There was, however, a risk of serious harm to them had the inadequate assessments been authorised. A finding of misconduct as the grounds of impairment is therefore warranted in the circumstances due to

- the seriousness of Mr Hill's breaches of the Standards,
- the risks of harm to vulnerable service users, and
- the public interest in upholding and maintaining proper professional standards.

Submissions on behalf of Mr Hill

78. Mrs Hill, on behalf of Mr Hill submitted that Mr Hill is very aware that the assessments were inadequately personalised. This was probably due to his personal stressors at the time. Mr Hill however is keenly aware of the necessity for fully personalised assessments and the potential impact on the affected service users.

79. The panel accepted the legal adviser's advice. The panel recognised that a finding of misconduct is one for its own professional judgement and not a matter of evidence. However, a finding of misconduct can only be made where there has been a sufficiently serious falling-short in the standards expected of a social worker.

80. A social worker is fit to practise when they have the skills, knowledge, character, and health to practise their profession safely and effectively without restriction.

81. The panel had regard to the guidance of Lord Clyde in *Roylance v GMC (No2)* [2001] 1 AC 311:

'*Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. 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*."

82. The panel took into account the guidance available to it in the impairment and sanctions guidance provided by Social Work England last updated in December 2019.

83. The panel paid careful attention to the standards for social workers and in particular standards 1, 2, and 3, as follows:

1.1 Value each person as an individual, recognising their strengths and abilities;

1.2 Respect and promote the human rights, views, wishes and feelings of the people I work with, balancing rights and risks and enabling access to advice, advocacy, support, and services;

1.3 Work in partnership with people to promote their wellbeing and achieve best outcomes, recognising them as experts in their own lives;

2.4 Practise in ways that demonstrate empathy, perseverance, authority, professional confidence, and capability, working with people to enable full participation in discussions and decision-making;

3.1 Work within legal and ethical frameworks, using my professional authority and judgement appropriately;

3.2 Use information from a range of appropriate sources, including supervision, to inform assessments, to analyse risk, and to make a professional decision;

3.3 Apply my knowledge and skills to address the social care needs of individuals and their families commonly arising from physical and mental ill health, disability, substance misuse, abuse, or neglect, to enhance quality of life and wellbeing; *3.5 Hold different explanations in mind and use evidence to inform my decisions*; *3.11 Maintain clear, accurate, legible, and up to date records, documenting how I arrive at my decisions*.

84. The panel considered that the breaches of these standards by Mr Hill were serious. Risks had been created for both highly vulnerable service users and for the council, even if not realised as far as the panel knows.

85. Mr Hill was an experienced social worker. He knew that he was expected to comply with the statutory obligation to communicate with service users and to facilitate as far as possible their participation in the restriction of liberty assessment process decisions affecting them. Mr Hill failed to comply with the requirements of the Mental Capacity Act 2005. Further, he fell significantly short of the obligations of a social worker to include the thoughts, feelings, and aspirations of service users, in decisions made about them and their lives and to use appropriate resources to inform his decisions.

86. Mr Hill's actions had the potential to diminish to a pro forma process what should have been a valuable and important decision-making opportunity to safeguard and protect vulnerable service users, while ensuring that their liberty was not inappropriately or disproportionately restricted.

87. No actual harm had been identified for the panel. Mr Hill's actions, however, had the potential to lead to harm, both for the service users concerned and for the council. The service users might have been subject to levels of restriction that were not necessary or were disproportionate or were harmfully excessive. Alternatively, the generic process adopted by Mr Hill had the potential to leave vulnerable service users at risk of inadequate restrictions on their liberty so exposing them to risks of harm. The council was exposed to

the risks of legal action for breaches of human rights as a consequence of Mr Hill's inadequate assessments. Further, the council required to have the assessments reinstructed leading to delay. In that regard, the service users were exposed to a further risk bound up in the necessary delay in the assessments being re-instructed. Decisions about their liberty had to be deferred until replacement assessments were obtained, so leaving the decisions about the service users unresolved until that point.

88. In head of allegation two, Mr Hill's failure to identify and reflect the wishes and feelings of the service users fell far short of the requirement that people such as vulnerable service users should be valued and listen to. The generic nature of the inadequate assessments did not demonstrate that Mr Hill had listened to and taken into account the views of the service users. As a result, BSF had not felt able to authorise Mr Hill's assessments.

89. The panel considered that the assessments fell so far short of what was adequate that the contents could have been referring to very many vulnerable service users. The service users in Schedule 1 were unique and each experienced different abilities, life experiences and potential for fulfilling and valuable experiences of care. BSF's inability to

distinguish between them meant that their opportunity to participate in decisions made about their lives had not been explored. Mr Hill's practice in this regard was unprofessional. He could have returned the instructions sent to him by the council, but did not, in breach of his professional obligations to the council and in breach of the 2005 Act.

90. In the panel's view, Mr Hill had

- failed as an independent contractor,
- failed as an individual Assessor,
- fallen far short of his regulator's standards, and
- had exposed service users to risks of being inadequately protected or of having their liberty disproportionality restricted.

91. The panel considered these failings and fallings short to be serious and accordingly found that the statutory grounds of misconduct were established.

Findings and reasons on impairment:

92. Having found misconduct, the panel went on to consider whether, as a result of that misconduct, Mr Hill's fitness to practise is currently impaired.

Ms Atkin on behalf of Social Work England

93. Ms Atkin on behalf of Social Work England invited the panel to find that Mr Hill's fitness to practise was impaired on grounds of protection of the public including the wider public interest element in order to maintain public confidence in

- the profession,

- Mr Hill, and
- to promote and maintain proper professional standards for social workers.

94. In regard to impairment on grounds personal to Mr Hill as a social worker, Ms Atkin submitted that Mr Hill had demonstrated some limited insight in recognising that his assessments could have been of better quality. In response to the concerns, Mr Hill said that he had completed some further training in relevant areas and intended to complete some further reflection working with an independent supervisor. However, Ms Atkin submitted that there was insufficient evidence of this intended work. Further, Mr Hill had not submitted any reflection to show that he had identified and engaged with the impact that his actions had on the service users concerned, the council and his professional colleagues including BSF and the impact on public trust and confidence.

95. Ms Atkin observed that Mr Hill's reflections were misdirected to the extent that they attempted to deflect blame for his shortcomings to

- the council's additional guidance,
- to care home staff and
- to the pandemic restrictions which co-existed [PRIVATE].

Mr Hill's responses to Social Work England include an assertion that the assessments met HM Government advice as well as the council's guidance. Mr Hill had not accepted that his assessments were insufficiently personalised and accordingly this lack of insight pointed to risks of repetition of his failings with associated risks of harm to service users and to the wider public interest.

96. In regard to impairment on grounds of the wider public interest, Ms Atkin submitted that well informed members of the public would expect a finding of impairment to be made in the circumstances of Mr Hill's case. Standards for social workers would not be declared and upheld in the absence of a finding of impairment.

<u>Mrs Hill on behalf of Mr Hill</u>

97. Mrs Hill submitted the following documents in support of her submission that Mr Hill's fitness to practise was impaired but is now fully remediated.

- 7.1 Andy statement 01.08.2023
- 7.2 references provided to Social Work England March 2021
- 7.3 Social Work England CPD 28.11.2021.

She disagreed that the wider public interest required a finding of impairment.

98. Mrs Hill submitted that Mr Hill's personal difficulties, [PRIVATE] were important background factors to take into account. Mr Hill had practised for many years, including as a BIA,

without incident. The assessments which led to this hearing were associated with those stressors, together with the extraordinary Covid 19 pandemic restrictions. Cumulatively, these factors pointed to an explanation for Mr Hill's departure from his usual good practice.

99. Mrs Hill reminded the panel that [PRIVATE]. Mrs Hill said that he had undertaken many assessments since the events in question, without concern. Mr Hill's practice is generally very highly regarded and his professional colleagues comment positively on the completeness and thoroughness of assessments done by him.

100. Mrs Hill submitted that Mr Hill had responded to the concerns positively and reflected on his conduct. He had taken the opportunity to engage in informal supervision. Following panel questions, Mr Hill stated that he was planning on taking up formal supervision starting next week with a retired assistant director of the council where he now works. Further, Mr Hill reduced his workload to no more than three days a week in order to ensure that he devoted the time and care necessary DoLS assessments and now has a much better worklife balance.

101. Mr Hill also told the panel that he deeply regretted the inadequate assessments completed by him. He would do everything in his power to ensure that there would be no repetition. Mr Hill said that he no longer works alone. He manages his [PRIVATE] by discussing his work pressures with his business partner (Mrs Hill), who is also a BIA for the same authority. [PRIVATE].

102. The panel considered carefully the documents submitted by Mr Hill. The panel weighed carefully the submissions made by Ms Atkin on behalf of Social Work England and by Mrs Hill on behalf of Mr Hill. The panel observed that the testimonials in Mr Hill's favour were now 18 months old and were not up to date for this hearing. Nonetheless the give valuable and insightful information, when taken together with the other evidence of Mr Hill's uncriticised assessments practice.

103. The panel accepted the legal adviser's advice. In reaching its decision, the panel was mindful that the question of impairment is a matter of the panel's professional judgement. The panel was required to determine whether the social worker's fitness to practise is impaired as of today's date.

104. The panel took into account the impairment and sanctions guidance last updated by Social Work England on 19 December 2019, in particular paragraphs 11 to 63 which outlined the factors to be taken into account when determining impairment.

Personal impairment

105. The panel also considered the guidance provided in *Cohen v General Medical Council* [2008] EWHC 581:

- whether the Registrant's conduct was easily remediable;
- whether it had been remedied; and

- whether it was highly unlikely to be repeated.

106. The panel concluded that Mr Hill's conduct was remediable, albeit with some difficulty. Mr Hill had continued in practice as a BIA, without any further incident coming to the attention of his regulator. He had provided limited evidence of good practice and he had explained the modifications that he had undertaken in response to the concerns. Mr Hill had reduced his working hours and therefore his workload, which was likely to support good practice in person centred DoLS assessments. Also he retained the trust and confidence of councils who employed him to conduct assessments. In all circumstances, the panel considered that there was evidence of remediation, and that the risks of repetition had been reduced.

107. Taking all matters into account, the panel was satisfied that Mr Hill had sufficiently remediated his past misconduct. Further, the panel found that it could conclude that it was highly unlikely that Mr Hill's misconduct would be repeated.

108. The panel accepted entirely Mr Hill's emotional and intense expression of remorse and his sincere commitment to do what was necessary to avoid any repetition. Mr Hill had completed refresher training in BIA assessment on an annual basis since the incidents. However, the panel concluded that Mr Hill's insight while substantial, remains incomplete. He still identifies that his professional colleagues, including care home staff share some of the blame for his own failings. He is unwilling to let go of the deflection of blame towards the council's additional guidance. Those important reservations are balanced however by the fact that assessments completed by Mr Hill do not take effect until authorised by a senior supervising colleague.

109. Mr Hill has taken material steps to address the possibility of a repeat by reducing his working hours and by involving and collaborating with professional senior colleagues. Although there is no written evidence, the panel accepted Mr Hill's submission and person centred way, building on the experience gained from this process. The panel was encouraged by the email from Hull County Council dated the 23 March 2021 which stated that "Andrew's assessments are of a high standard, whenever there has been a discrepancy picked up by the supervisory body scrutiny process, Andrew has always addressed and amended the assessments in question" Mr Hill had completed approximately 300 satisfactory assessments. The panel also took account of the email from Hounslow dated 24 March 2021 that stated that the "Adult Safeguarding and DoLS team screens all BIA assessments as part of the authorisation process. No concerns have been identified in relation to Andrew Hill's work".

110. The panel concluded that Mr Hill's fitness to practise was no longer impaired by virtue of the personal component.

Public impairment

111. The panel paid close regard to the Social Work England guidance from paragraph 60 onwards. The panel also considered and applied the Grant test. The panel considered that Mr Hill's misconduct, in this case, engages limbs (a), (b) and (c) of the test formulated in the

High Court by Cox J in *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927 (Admin) at paragraph 76:

'Do our findings of fact in respect of [Mr Hill's] *misconduct, … show that his fitness to practise is impaired in the sense that* [he]*:*

a. *has in the past acted and/or is liable to act in the future so as to put a* [service user] *or at unwarranted risk of harm; and/or*

b. *has in the past brought and/or is liable in the future to bring the* [social work] *profession into disrepute; and/or*

c. *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the* [social work] *profession; and/or*

d. *…'*

112. The panel recognised that no actual harm appeared to have been caused to the service users identified in Schedule 1. However the risks of harm that Mr Hill's inadequate DoLS assessments exposed them to were significant and unacceptable.

113. The panel was also satisfied that Mr Hill's actions, even though conducted over a relatively short period of time and in relation only to one council, did have the potential to bring the reputation of the profession into disrepute. Mr Hill's inadequate assessments had attracted concern and criticism from a senior colleague, BSF. Further, care home staff would have been aware that the assessments had to be repeated. The well informed member of the public would have little difficulty in understanding the loss of confidence in the profession that this might attract.

114. The panel was also satisfied that Mr Hill had breached a fundamental tenet of the profession, to practise in a person centred way. Mr Hill's inadequate assessments had not prioritised the wishes and feelings of four vulnerable service users. This ran contrary to the fundamental tenets of social work which Mr Hill would, like all social workers, have been immersed in from the very beginning of his career.

115. Mr Hill had been in breach of the obligations imposed on him under the 2005 Act. The panel considered that the public would be concerned at this failure to act in accordance with his statutory duty. The public would be concerned by a social worker failing to properly assess and represent vulnerable service users' wishes and feelings necessary to safeguard them.

116. In these circumstances, a finding of impairment was necessary in order to declare and uphold standards for social workers and to maintain the trust and confidence of the public in the profession.

117. The panel, therefore, found Mr Hill's fitness to practise to be impaired on the grounds of public protection and in the wider public interest.

Decision and reasons on sanction

Ms Atkin on behalf of Social Work England

118. Ms Atkin submitted that the panel's findings in respect of Mr Hill 's impairment of his fitness to practise on grounds of the wider public interest required that a sanction be imposed which addressed the risks to the public arising from that impairment. Ms Atkin took the panel to relevant sections of the sanctions guidance and submitted that the appropriate and proportionate sanction was a warning order for 3 years.

119. Ms Atkin invited the panel to consider that taking no action or issuing advice would not be a sufficient order to maintain public trust and confidence. Mr Hill had acted in breach of fundamental principles of the social work profession. Advice cannot be reviewed before it expires. The guidance suggested that where a low but continuing risk to the public exists, these sanctions would not be appropriate or proportionate.

120. Ms Atkin said that a warning would send the profession a clear message of disapproval and act as a signal that a more severe sanction is likely if there were to be any repetition. A warning was appropriate in this case because the panel had found a low risk of repetition and that Mr Hill has demonstrated a sufficient degree of insight.

121. Ms Atkin submitted that a period of one year would not be sufficient. Mr Hill's failings cannot be described as isolated since four vulnerable service users were involved and the conduct was in breach of fundamental principles of social work. Accordingly a warning for 3 years would be sufficient to mark the wider public interest concerns and to reassure the public that the matter had been taken seriously.

Mrs Hill on behalf of Mr Hill

122. Mrs Hill said that she had carefully reviewed the guidance provided by Social Work England. She agreed with Ms Atkin that a warning order was the appropriate and proportionate level of sanction. Had this matter been dealt with in a workplace disciplinary context, Mrs Hill said that a warning would have been the most likely outcome.

Panel decision

123. The panel accepted the legal adviser's advice. The panel reminded itself that the purpose of imposing a sanction is not to punish the social worker, but to protect the public including securing the wider public interest of maintaining trust and confidence in the profession and, if possible, to restore the social worker to unrestricted professional practice. The panel's aim was to consider what sanction, if any, was necessary in order to fully protect the public, applying the least restrictive but equally effective alternative.

124. Before considering the individual options open to it, the panel identified what it considered to be the relevant aggravating and mitigating features in the case.

The panel identified the following mitigating factors:

- Mr Hill had no known fitness to practise history.
- The testimonials, although quite dated, were a valuable insight into Mr Hill's wider professional standing.
- Mr Hill's failings were associated with a difficult situation in meeting the pandemic restrictions while working independently and outside of peer support and review.
- [PRIVATE]
- Mr Hill had made some important early admissions which he maintained throughout.
- Mr Hill had expressed remorse from the outset.
- Mr Hill had taken substantial and practical steps to remediate his practice and had implemented measures that there likely to guard against any repeat.
- Mr Hill had kept his skills up to date, he had completed annual refresher BIA training and had practised without criticism since.

<u>The panel identified the following aggravating factors:</u>

- Mr Hill had breached fundamental tenets of the social work profession. He had not followed legislation designed to protect vulnerable service users.
- His actions had not allowed vulnerable service users to contribute their thoughts and feelings about important decisions in their lives.
- Mr Hill's insight is incomplete although satisfactory. He still deflects blame to the Covid 19 pandemic restrictions, the additional guidance by the council and care home staff.

125. The panel had regard to paragraph 1 of the sanctions guidance which states:

'Social Work England's overarching objective is to protect the public. We do so by protecting, promoting, and maintaining the health and well-being of the public; by promoting and maintaining public confidence in social workers in England; and by promoting and maintaining proper professional standards for social workers in England. Our fitness to practise powers enable us to deliver this overarching objective through proportionate sanctions where an individual social worker's fitness to practise is impaired.'

126. The panel then went on to consider each of the available sanctions in ascending order of restrictiveness.

127. The panel first considered whether this was an appropriate case for it to take no further action. In the panel's view, the misconduct found proved in this case was too serious.

128. The panel observed that taking no action would place no active restriction on Mr Hill 's practice. Accordingly, the panel concluded that to take no further action would be

insufficient to protect the public in that it would fail to address the wider public interest concerns in this case.

129. The panel next considered the imposition of an advice or a warning order.

130. The panel considered the guidance at paragraph 108. This provides:

‘ *A warning order is likely to be appropriate where (all of the following):*

- *the fitness to practise issue is isolated or limited*
- *there is a low risk of repetition*
- *the social worker has demonstrated insight*

Decision makers should consider issuing a warning order where (both of the following apply):

- *they cannot formulate any appropriate or proportionate conditions of practice • a suspension order would be disproportionate*’

131. The panel considered that Mr Hill’s misconduct could properly be categorised as limited in the sense that it was confined to four vulnerable service users over a relatively short period of time. The risks of repetition were low in the context of Mr Hill’s practical response to the concerns. He had demonstrated incomplete if satisfactory insight.

132. The panel was mindful that Mr Hill had practised unrestricted since the allegation and therefore a conditions of practice order was disproportionate. Supervision requirements sufficient to meet the risks to the wider public interest are being put in place by Mr Hill. In all of the circumstances, conditions of practice would be very close to the steps already implemented by Mr Hill in effect, but would probably require a more intrusive level of supervision than was justified in the public interest.

133. In all of the circumstances, the panel decided that a warning order was a proportionate and appropriate sanction. The panel carefully considered the duration of that order. It recognised that Mr Hill had been in practice for more than two years since the date that the concerns arose, without incident as far as the panel knows. However, a period of one year seemed too short to command the trust and confidence of the public in circumstances where the order is being imposed in order to promote and maintain the wider public interest. On the other hand, a period of five years was inappropriate and was disproportionate. The public would recognise that such a length of order would not be necessary at this stage. It could not be said that Mr Hill had only marginally fallen short of requiring a restriction of practice.

134. Accordingly, the panel imposed a warning order for 3 years. The panel decided that in all of the circumstances, it was not necessary for this order to be subject to a review before expiry.

135. Mr Hill should understand that the warning order shows clear disapproval of his conduct. It is a signal that he is highly likely to receive a more severe sanction if he repeats the behaviour.

Interim order

136. Miss Atkin did not make an application for an interim order to be imposed, pending the final order coming into effect.

137. The panel accepted the advice of the legal adviser who advised that in accordance with Paragraph 11(b) of Schedule 2 of the regulations the panel may make any interim order it considers is necessary for the protection of the public, which includes the wider public. He also advised the panel that an interim order can only be made if it is necessary and must not be merely desirable.

138. For the reasons set out in the substantive decision, the panel was satisfied that an interim order was not necessary to protect the public. An interim order was not in the wider public interest in this case where the panel had decided that a conditions of practice order was disproportionate. In circumstances where the minimum interim order is one of conditions of practice, it would be inconsistent with its earlier reasoning were the panel to impose such an interim restriction.

Right of appeal:

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

    a. the decision of adjudicators:

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

        iii. to make a final order.

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

140. 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.

141. 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.

142. 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:

143. 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

144. 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:

145. 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/ourhttps://www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/decisions-about-practitionerswork-with-regulators/decisions-about-practitioners.