

Social Worker: Emmanuel Banda

Registration Number: SW100606

Fitness to Practise:

Final Hearing

Date(s) of hearing: Monday 31 January 2021 – Friday 11 February 2022

Hearing Venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018.
2. Mr Banda attended and was not represented. In accordance with case management directions, Ms Ingham was instructed to represent Mr Banda for the cross-examination of Person B.
3. Social Work England was represented by Ms Ferrario, as instructed by Capsticks LLP.

Adjudicators	Role
Manuela Grayson	Chair
Michael Branicki	Social worker adjudicator
Victoria Smith	Lay adjudicator

Jenna Keats	Hearings officer
Andrew Brown	Hearings support officer
Helen Gower	Legal adviser

Allegation as amended

4. (1) Whilst registered as a social worker with the Health and Care Professions Council ('HCPC');

1.1 On or around 13 September 2018, you provided Social Personnel with a copy of a CV which intentionally omitted your employment with the London Borough of Barnet between January 2016 and March 2016.

1.2 On or around 13 September 2018, you provided 4 recruitment agency with a copy of a CV which intentionally omitted your employment with the London Borough of Barnet between January 2016 and March 2016.

(2) Whilst registered as a social worker with the Health and Care Professions Council and during the course of your employment with Poole Social Services you;

2.1 On or around 4 February 2018 sexually assaulted Person A at your home by,

- I. Touching her breasts without her consent
- II. Placing her hand on your penis without her consent
- III. You touched her bottom without her consent
- IV. Removed her top and bra without her consenting to this

2.2 On or around 27 April 2018 sexually assaulted Person B at her home by:

- I. Having vaginal sex with her without her consent.
 - II. forcing her to masturbate you when she did not consent to this.
- 2.3 On or around 29 April 2018 sexually assaulted Person B at her home by;

- I. Touching her breasts without her permission
- II. Placing her hand on your penis over your jeans and without her consent

3. The conduct alleged at particulars 1.1 and/or 1.2 amounted to dishonesty.

The matters set out in the allegations above constitute misconduct.

By reason of your misconduct your fitness to practise is impaired.

Preliminary matters

Amendment of the Allegation

- 5. Ms Ferrario made an application to amend sub-particulars 1.1 and 1.2 of the Allegation to add the word “intentionally”. This proposal to amend was set out in Social Work England’s statement of case. Ms Ferrario submitted that Mr Banda was not prejudiced because it did not significantly change the Allegation. Mr Banda has been aware at least since the summer of 2021 that Social Work England allege that he purposefully omitted information from his CV. Ms Ferrario submitted that the proposed amendment particularised and clarified the Allegation.
- 6. Mr Banda did not oppose the application for an amendment.
- 7. The legal adviser confirmed that the panel has a discretionary power to make amendments to the Allegation. In exercising its discretion the panel should consider whether the proposed amendment created any prejudice for Mr Banda and, if not, whether the proposed amendment was appropriate.
- 8. The panel considered that the proposed amendment did not create unfairness for Mr Banda and that it was appropriate to clarify the particular by making the amendment proposed by Ms Ferrario. The panel therefore agreed to the proposed amendment.
- 9. In her opening submissions Ms Ferrario referred to dishonesty. The panel noted that dishonesty was not included in the Allegation as set out in Social Work England’s statement of case, and requested legal advice. The Legal Adviser referred to R (Council for the Regulation of Health Care Professionals) v Nursing and Midwifery Council and Kingdom [2007] EWHC 1806, Professional Standards Authority for Health and Social Care v General

Chiropractic Council and Briggs [2014] EWHC 2190 and Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319. The panel has a responsibility to ensure that there is no under-charging. The omission of a charge of dishonesty is a serious procedural error. The panel has the power to amend the Allegation, and it is possible to amend the Allegation, even after findings of fact have been made. In considering whether it should exercise its power to make amendments to the Allegation, the panel should consider whether the proposed amendment created unfairness for Mr Banda.

10. Mr Banda acknowledged that he understood that Social Work England's case included that he had omitted the Barnet employment from his CV to deceive the recipients. In his witness statement dated 26 July 2021 Mr Banda refers to allegations of deceit and dishonesty and responds to them.
11. The panel decided that it was fair and appropriate to amend the Allegation to add particular 3 (dishonesty). The panel considered that it would be entirely unfair to Mr Banda for the panel to make any findings such as deceit or dishonesty, unless this matter was expressly included in the Allegation. While this amendment was at a late stage, it did not add new facts or matters to the Allegation. The panel took into account that Mr Banda does not have the benefit of legal representation, but decided that the amendment did not prejudice him. It was fair to him to amend the Allegation at this stage, allowing him a full opportunity of responding to the allegation of dishonesty. The addition of the dishonesty allegation was required, because without it the mischief of Mr Banda's action in omitting information from his CV was not identified. The public interest required the addition of the dishonesty particular to ensure that there was no under charging.

Application to admit hearsay evidence

12. Ms Ferrario made an application to admit the hearsay evidence of EM (a signed witness statement dated 6 August 2019 obtained in the HCPC proceedings) and CB (a signed witness statement dated 28 October 2019 obtained in the HCPC proceedings). A full written application to admit the evidence set out the efforts made by Social Work England to secure the attendance of the witnesses with supporting documents.
13. The panel ensured that Mr Banda had a full opportunity to speak to the legal adviser and to consider his position with regards to Social Work England's application. Mr Banda confirmed that he had no objection to the admission of the statements of EM and CB as hearsay evidence.
14. The panel considered the information in Social Work England's application to admit hearsay evidence and agreed to the application to admit hearsay evidence.

Exclusion of evidence

15. The legal adviser highlighted evidence in the bundle that was prejudicial to Mr Banda, but that did not form part of Social Work England's case. Ms Ferrario agreed that this information was not part of Social Work England's case. The legal adviser confirmed that this information should be redacted and should form no part of the panel's decisions.
16. The panel accepted the advice of the legal adviser. As a professional panel, it redacted the identified prejudicial information and entirely excluded this information from its decisions.

Background

17. The HCPC received a referral regarding Mr Banda from JS, a Recruitment Advisor for Children and Adult Social Care at South Gloucestershire Council ("Gloucestershire") in relation to 1.1 and 1.2 of the Allegation.
18. Gloucestershire had interviewed Mr Banda on 27 September 2018 for a role as a Social Worker. When background checks were carried out JS checked the HCPC website and identified an ongoing fitness to practise (FTP) matter for an incident at Barnet Council in 2016. The HCPC later concluded that these allegations were not well founded. JS cross checked Mr Banda's CV which had been passed to Gloucestershire by '4 Recruitment Services' and there was no reference to employment at Barnet in 2016. Gloucestershire rescinded the offer of employment and relayed this to 4 Recruitment Services on 28 September 2018.
19. On 20 May 2019, the HCPC's Investigating Committee decided that there was a case to answer in relation to this referral.
20. From June 2017 to May 2018 Mr Banda was employed as an agency Social Worker in the Child in need team at Poole County Council ("Poole"). Person A is a Social Worker and at the time of the events she was also employed as a Social Worker at Poole, but worked in a different team and building to Mr Banda.
21. The HCPC received a referral from Person A dated 26 July 2018. She alleged that she was sexually assaulted by Mr Banda in February 2018. Initially she did not report the incident to the police. She was later informed of a further allegation of sexual assault made against Mr Banda, and she contacted the police.
22. Person B is a Social Worker and at the time of the events she was employed as a Social Worker at Poole in the same team as Mr Banda. In an e-mail dated 13 November 2018, Person B alleged that she was sexually assaulted by Mr Banda. She stated that she had reported the incident to Dorset Police in May 2018 and was interviewed twice in relation to the matters. Subsequently the CPS decided not to prosecute.
23. On 8 July 2019, the HCPC's Investigating Committee decided that there was a case to answer in relation to the referrals from Person A and Person B.

Admission by Mr Banda

24. Mr Banda admitted sub-particulars 1.1 and 1.2 of the Allegation.

Summary of Evidence

i i) Social Work England

25. The panel read Social Work England's bundle of exhibits.
26. In relation to sub-particulars 1.1, 1.2 and 3 of the Allegation the panel heard evidence from JS. He described his role as Recruitment Adviser at Gloucestershire and the process adopted by Gloucestershire for background checks on Social Worker candidates recruited through agencies. He described that he checked the HCPC website and noted the ongoing FTP matter. Having checked Mr Banda's CV he agreed with the recruiting manager that Gloucestershire would not proceed with Mr Banda's application.
27. The panel read the hearsay statement of EM. At the time of the events he was a recruitment consultant at 4 Recruitment Services. On 24 September 2018, he received an e-mail from Mr Banda with his CV and references. EM has no responsibility for the compliance aspects of recruitment and did not ask Mr Banda about his fitness to practise history. EM's involvement was limited to liaising with Mr Banda and sending Mr Banda's CV to potential employers. On 24 September 2018, EM sent Mr Banda's CV and references to JS at Gloucestershire. EM subsequently received a call from JS advising him that there was an issue with Mr Banda's CV and that Gloucestershire would not pursue Mr Banda as a candidate.
28. The panel read the hearsay statement of CB. At the time of the events she was employed as a Senior Recruitment Consultant by a recruitment agency 'Social Personnel'. She recalled that she came across Mr Banda's CV and spoke to him in September 2018. He then provided a copy of his up-to-date CV. CB sent an e-mail to JS at Gloucestershire on 13 September 2018, enclosing Mr Banda's CV. CB described that Mr Banda informed her, early on in the search, that he had an allegation made against him which had been referred to the HCPC, but that there were no restrictions on his practice and that he was still registered and able to work. CB confirmed this on the HCPC website before continuing to put Mr Banda forward for potential positions.
29. In relation to particular 2.1 of the Allegation the panel read the hearsay statement of Person A (admitted in evidence by the case management decision dated 30 July 2021). Person A met Mr Banda at work in mid 2017 when he came to assist her team which was short-staffed. Person A was responsible for looking after Mr Banda during the day. The following day Person A agreed to give her personal telephone number to Mr Banda. Following an exchange of text messages and Person A's holiday in January 2018, Person A agreed to go on a date with Mr Banda.

30. Person A and Mr Banda met for the date on 4 February 2018. They visited a bowling leisure site and Mr Banda invited Person A to watch a film at his house that afternoon. Person A accepted this invitation. Person A described that she sat on the bed in Mr Banda's bedroom which was in a shared house. She stated that she chatted to Mr Banda during the film and that he kissed her and she kissed him back. Person A stated that Mr Banda also started to touch her and that his hands wandered onto her breasts. She recalls that at one point she said no and faced away from Mr Banda. She said that she kept moving his hands away from her breasts.
31. Person A described that Mr Banda took his trousers and socks off and took Person A's top and bra off. Person A said that she said "no" when he did this and that Mr Banda replied "don't be stupid". Person A said that she and Mr Banda continued to kiss. She described that Mr Banda lay on her and that his hands were in her pants and on her bottom. She stated that she tried to stop him by pulling his hands out of her pants and saying no.
32. Person A described that Mr Banda took his boxer shorts off and got into bed under the covers. She felt that she did not want to get into bed, but she did so. Person A said that she said she did not want to do this, and he told her to stop being stupid. He then took hold of her hand and forced it onto his penis. When she pulled her hand away, she thought Mr Banda was angry. He stopped touching her, lay on his back, took a deep breath and looked at the ceiling. Person A said that Mr Banda then put her hand on his penis again by pulling her hand towards him. Person A said that she felt at the time as if it would be the quickest and safest thing to do to masturbate him and the event would be over. Person A said that while she was masturbating Mr Banda she laughed out loud and this made him very angry. She climbed over Mr Banda, told him she was leaving and left the property.
33. Person A described the encounter with Mr Banda as being very one-sided.
34. The panel read the agreed statement of KD, a colleague at Poole. Person A had informed KD that she was in contact with Mr Banda and had agreed to go on a date with him. In or around February 2018, KD and Person A were walking to their cars and KD asked Person A how the date went. Person A told KD that the date had not been good. Person A said that things happened sexually that she did not want to happen and that she had gone along with what Mr Banda wanted so that she could leave. KD stated that she told Person A that she should consider reporting what happened to the police. In July 2018 KD provided a statement to the police.
35. Person B gave oral evidence to the panel in relation to particulars 2.2 and 2.3. She worked with Mr Banda as a work colleague in the same team for approximately one year prior to May 2018. On 1 March 2018 members of the team had taken photographs in the snow and Person B asked Mr Banda to send photos to her on her personal mobile number. Mr Banda did so and sent a further message to Person B on Facebook. Person B did not accept that a personal relationship then developed between herself and Mr Banda involving long telephone calls. She described that in the week prior to 27 April 2018 there was more communication between herself and Mr Banda, and that telephone communication began at that stage. Person B stated that Mr Banda was insistent that he wanted to meet with her

on a date before her holiday and that she agreed and invited him to her flat on 27 April 2018.

36. Person B collected Mr Banda from his house because it was difficult to park at her flat. Mr Banda spoke to Person B's daughter who was aged approximately eleven. Person B's daughter, Mr Banda and Person B played games together until Person B took her daughter to bed. Person B and Mr Banda kissed and engaged in intimate acts, in the lounge. Looking back at the entirety of the events with hindsight, Person B described Mr Banda as being persistent and forceful, but in her oral evidence she confirmed that everything that took place in the lounge was consensual.
37. Person B described that Mr Banda got up and walked towards her bedroom. She followed him and got onto the bed next to him. Both she and Mr Banda were undressed and the physical contact between them was heated and continued for some time. Person B said that Mr Banda penetrated her vagina with his penis, this happened quickly, and that she immediately said that she was not on the pill and had no contraception. She then repeatedly asked Mr Banda to stop and tried to push him off her. Mr Banda said that he had something in his bag and would go and get it.
38. When Mr Banda returned to the bedroom he handed a condom to Person B. Mr Banda then took the condom from Person B and put it on top of the chest of drawers. Mr Banda then penetrated Person B again and Person B was persistent in telling him to stop. Person B described that Mr Banda pulled her hair, and that she said that he was hurting her and asked him to stop. He said "let me finish, I won't be long". She also described that she tried to leave the bed when Mr Banda was directing her to masturbate him and that Mr Banda pulled her back onto the bed. She described that Mr Banda pushed her right leg up and that he became more aggressive and desperate while she was saying that he was hurting her and asking him to stop. Person B managed to get up and leave the room and Mr Banda then left.
39. The following day, 28 April 2018, Person B described that she had bruising on her arms and thighs from the events the previous evening. Mr Banda had left his keys behind, and she returned them to him on her way to another appointment. Person B and Mr Banda spoke by telephone. Mr Banda told Person B that he had told a work colleague that he and Person B had slept together. Person B said that she was cross that this personal information was shared and asked Mr Banda not to tell anyone else. Person B agreed to see Mr Banda the following day, 29 April 2018. Person B described this decision as irrational and stated that she was not in a rational frame of mind at that time.
40. On 29 April 2018 Mr Banda, Person B and Person B's daughter ate together at Frankie's and Benny's. Person B then intended to drop Mr Banda at his house, but her daughter persisted in asking if Mr Banda could come back to the flat and Mr Banda joined in. Person B agreed.
41. While Person B was saying goodnight to her daughter, Mr Banda went into Person B's bedroom. He invited Person B to join him on the bed. Person B initially refused, because her daughter was awake, but Person B eventually lay down on the bed. Person B's daughter called from her bedroom and Person B immediately got up and went to see her.

42. After settling her daughter Person B went into the lounge and Mr Banda followed her. Mr Banda lay on the sofa and tried to pull Person B towards him. Person B said that she did not want anything to happen that night. Mr Banda said that he wanted a cuddle and Person B lay down on the outside of him. Person B described Mr Banda touching her breast over her jumper and that she pushed Mr Banda away. He then touched her breasts again under her jumper and pinched her nipple. Person B said that he was hurting her and pushed Mr Banda away. Mr Banda then took Person B's hand and moved it down to touch his penis over his jeans. Person B described the behaviour as continuing "for some time" before she stood up, asked Mr Banda to leave and walked away towards the kitchen area of the lounge. Mr Banda remained on the sofa for approximately ten to fifteen minutes before he left.
43. In early May 2018, while she was on holiday, Person B spoke to a friend and described in detail what had occurred. Following this conversation, Person B realised that what had occurred was wrong. She contacted a police officer on 18 May 2018 and reported the incident. She participated in Achieving Best Evidence (ABE) interviews with the police on 1 June 2018 and 25 June 2018, but was informed in September 2018 that the police concluded that there was insufficient evidence to take the case to the Crown Prosecution Service.

ii) Social Worker

44. The panel read the material in Mr Banda's response bundle which included a witness statement dated 26 July 2021 and a written response to the Allegation dated 10 January 2022.
45. The panel heard oral evidence from Mr Banda. In relation to sub-particulars 1.1 and 1.2 of the Allegation Mr Banda confirmed that there was a three month gap in his CV from January to March 2016. In this three month gap he worked at Barnet, at Haringey and at Oxford. He stated that he decided to exclude these short periods of work from his CV because he did not think that they were relevant work experience. He stated that he did speak to CB about the ongoing HCPC investigation and told her that he was registered and able to work. In Mr Banda's witness statement he described that on 22 September 2018 he spoke to an individual from the compliance team at 4 Recruitment Services, who was not EM. He was asked to explain the gap on his CV and he did so, being open about the ongoing HCPC investigation.
46. In relation to paragraph 2.1 of the Allegation Mr Banda described meeting with Person A on a single day at work and inviting her on a date. He confirmed that after the bowling he invited Person A to his house and that they sat in his bedroom watching a film and mutually kissing.
47. At the start of Mr Banda's oral evidence, the panel invited him to clarify the references to Persons A and B in his witness statement dated 26 July 2021, because it appeared that the references to Person B described incidents involving Person A, and that some of the references to Person A should be references to Person B. Mr Banda agreed with the panel, but later in his oral evidence he said that he had become confused between Person A and

Person B and that his description in his response relating to Person A, of an incident involving masturbation, should have referred to Person B, not Person A.

48. In his oral evidence Mr Banda told the panel that the contact between himself and Person A was limited to kissing and holding Person A in his arms, and that there was no other sexual touching. He said that in the discussions about the film there was a disagreement between himself and Person A which related to cultural differences and attitudes towards women. His understanding was that Person A disapproved of the views that he expressed about women and that this explained the text message that Person A had later sent to him.
49. Mr Banda denied that he sexually assaulted Person B. He described that he exchanged phone numbers with Person B after she requested photographs that he had taken of the team outside in the snow on 1 March 2018. He then described that a relationship developed between himself and Person B which included long telephone conversations that continued for hours. He recalled that they agreed to meet for a date on 28 April 2018, but that Person B suggested that they should meet on 27 April.
50. In his oral evidence Mr Banda described that when he arrived at Person B's flat she made pizza. After they played board games with Person B's daughter, Person B put her daughter to bed. He sat on the sofa with Person B watching TV and they took a selfie photograph. On the sofa he and Person B were mutually kissing and touching each other and he described everything as "normal". He described that things became heated on the sofa and that Person B led him to the bedroom. Person B's daughter was interrupting and they decided to go to the bedroom to be more discrete. They both removed clothes, and were in bed, kissing and touching each other.
51. Person B then asked if he had a condom and he said that he did. He cannot remember if the condom was in the kitchen or in his jeans, but he obtained it and Person B saw it. The kissing and touching continued and things became heated. Mr Banda denied that he penetrated Person B's vagina with his penis. There was a big knock on the door and Person B's daughter was there. Person B stood up and went to her daughter's room. Mr Banda described himself as being frustrated and that he then left Person B's flat. Mr Banda stated that he wanted to have sex with Person B, but that this did not take place because Person's B's daughter disturbed them.
52. Mr Banda had left his keys behind, which she returned to him the following morning. In the evening on 28 April 2018 he had a discussion with Person B about the previous evening and that it was not appropriate because Person B's daughter was not settled. He agreed to meet with Person B for a meal the following day.
53. Mr Banda then described the events on 29 April 2018. Following the meal, there was no plan that he should go to Person B's flat. This occurred because Person B's daughter asked that he should return with them to play games. Mr Banda described in the course of the evening he and Person B went to the bedroom, but Person B's child knocked on the door and that Person B then went back to the lounge. He followed Person B to the lounge, but then left for his house. Following Person B's return from holiday, the relationship ended.

Finding and reasons on facts

54. The panel accepted the advice of the legal adviser which included reference to sections of the Sexual Offences Act 2003 and to cases including *Arunakalaivan v GMC* [2014] EWHC 873, *R(Dutta) v GMC* [2020] EWHC 2020, and *Ivey v Genting Casinos* [2017] EWHC 3043. The legal adviser reminded the panel that the burden of proof is on Social Work England and the standard of proof is the balance of probabilities.

Particular 1

55. The panel found sub-particulars 1.1 and 1.2 proved by Mr Banda's admission, the documentary evidence, the evidence of JS, and the hearsay evidence of EM and CB.

Particular 2.1

56. The panel first considered what weight, if any, it should give to Person A's hearsay statement.
57. The panel noted that efforts were made by Social Work England to encourage and enable Person A to give evidence to the panel. While recognising that a significant time has elapsed since the events, the panel was disappointed that Person A, a senior Social Worker, decided not to give oral evidence. Her reasons were that she was not willing to drag up events from three years ago, having only just put the matter, which had had a significant impact on her, behind her.
58. The panel noted that the hearsay evidence took the form of a signed witness statement prepared for the HCPC and that Person A knew that the statement was for the purpose of regulatory proceedings. The statement is dated 9 October 2019 which is more than eighteen months after the events in February 2018. Person A's first description of the February 2018 events was a brief description to her colleague KD in February 2018 and then a report to the HCPC on 26 July 2018, some five months after the events. These earlier accounts are consistent with Person A's witness statement, but they did not include important details which are contained in the witness statement. The panel noted that Person A spoke to the police in or around March 2018, but no written records of her contact with the police have been provided to the panel. Person A did not participate in an ABE police interview.
59. Person A's hearsay evidence is inconsistent with Mr Banda's evidence. Although the panel had concerns about Mr Banda's evidence, it noted that in every description he has given the intimacy that took place between himself and Person A was consensual.

60. The evidence of the absence of consent, as set out in Person A's witness statement, is that she told Mr Banda and physically indicated to Mr Banda that she did not wish him to touch her and did not wish to touch him and that he continued after this communication. This important evidence could not be explored or tested either by Ms Ingham, as special counsel instructed for Mr Banda, or by the panel. The panel considered that there were nuances in Person A's witness statement which needed to be explored in detail, and that without such exploration it was not possible for the panel to fairly assess the reliability of her evidence in relation to all of the required elements of a sexual assault.
61. In all the circumstances, the panel decided that it could give very limited weight to Person A's evidence.
62. The panel next considered the other evidence relating to particular 2.1. Person A sent a text message to Mr Banda on 5 February 2018, the day after the alleged incident. This text message stated: *"Hi. I don't quite know what to say about yesterday. We did things I did not want to do. I know from what u have said that u have a distrust of English women but I would like to put it to u that u have no understanding of women and relationships with them. Based on my experience with you yesterday I think you need some help around ur attitude towards women. I shan't go on but would just like to say that I do not want u to contact me again. If I see u at work I will be professional toward u and I expect the same in return."*
63. While this message is consistent with Person A's hearsay statement, the message does not, by itself, prove that the acts set out in particular 2.1 took place or that any of those acts amounted to a sexual assault. Mr Banda provided the panel with his explanation for this text message, that Person A felt strongly and negatively about the views he had expressed in a discussion relating to the film they had watched together.
64. The panel was also provided with a police interview conducted with KD. In this interview KD described a conversation with Person A in February 2018 in which Person A told her that on the date with Mr Banda she did things she didn't want to do because Mr Banda was getting angry and making her feel uncomfortable and that he was insisting on her holding his penis. The source of this report is Person A, and, by itself, this evidence did not add to Person A's hearsay evidence as set out in her witness statement.
65. The panel considered that Mr Banda's evidence relating to Person A was confused and contradictory. In paragraphs 30-31 of his witness statement he appeared to provide his response to Person A's witness statement where she described that Mr Banda was directing her to masturbate him. Mr Banda told the panel that in these paragraphs he was describing an incident with Person B. The panel was surprised that Mr Banda appeared to have been so confused between Person A and Person B, particularly given that the context and location of the events for Person A and Person B was very different, and that the events occurred two months apart.
66. Although the panel had concerns about the reliability and credibility of Mr Banda's evidence relating to Person A, it bore in mind that the burden of proof is on Social Work England and that Mr Banda does not have to prove anything. Whilst paragraphs 30 and 31 of Mr Banda's

witness statement could, if referring to Person A (which he denied in oral evidence) be taken to support the action alleged at sub-particular 2.1, Mr Banda's evidence was that Person A consented to the action. There was nothing in Mr Banda's evidence that supported the lack of consent alleged at particular 2.1 or added weight to that part of Person A's hearsay witness statement.

67. Having decided that it could give very little weight to Person A's hearsay evidence, and that the other evidence was insufficient to prove particular 2.1, the panel found that Social Work England has not discharged the burden of proof. This decision applied to each of the sub-particulars in particular 2.1, considered separately.

Particular 2.2

68. Person B's description of the events on 27 April 2018 cannot be reconciled with Mr Banda's account of the events. The panel therefore had to make a careful assessment of the credibility and reliability of Person B's evidence and Mr Banda's evidence.
69. The Panel found that Person B's account of the events on 27 April 2018 has been broadly consistent over time. The panel noted some differences of detail and differences of emphasis, but these were differences the panel would expect, particularly given the passage of time since the events. The panel recognised that in her HCPC statement dated 13 November 2019 Person B was describing events with the benefit of hindsight and after she had engaged in trauma therapy. In her oral evidence, Person B was clear and open in acknowledging that all the intimacy that took place prior to the mention of a condom was consensual.
70. Person B's description of the key events relating to the penetrative sex and her asking Mr Banda to stop because of the absence of contraception in her oral evidence were consistent with her account in the police ABE interview dated 1 June 2018, approximately one month after the events in question when they would have been fresh in Person B's mind.
71. The panel considered the events and the contemporaneous text and Facebook messages exchanged between Person B and Mr Banda on 28 and 29 April 2018. In Ms Ingham's questioning and in Mr Banda's evidence to the panel, Person B's reliability and credibility were challenged on the ground that her behaviour on 28-29 April 2018 was fundamentally incompatible with her description of the events on 27 April 2018. Mr Banda referred to the fact that Person B is a qualified Social Worker, working in safeguarding, with an understanding of women in abusive relationships.
72. The first message on 28 April 2018 was sent by Mr Banda to Person B *"I feel shit about yesterday....I think I ruined it at the end by getting drunk...sorry I upset you...drop my keys sometime if you find them"*. Person B replied to this message in a friendly tone *"I didn't realise you'd drunk that much!! Lol shall we chat about it later....Only got about an hour sleep ha ha xxx"*. There were further friendly messages and Person B commented on the

selfie picture that had been taken on the previous evening “lovely pictures”. She then agreed to meet Mr Banda the following day and to take her eleven year old daughter for a meal with him.

73. Person B described her behaviour and actions as irrational and illogical. She now attributes her illogical response and action to what she described as “trauma”, referring to the impact on her of the events.
74. The Panel considered that it was very unlikely that Person B is mistaken about the events on 27 April 2018 or that she has misremembered them, particularly as she made an early report to the police. Given the events and the text messages on 28 April 2018 the panel considered whether Person B had any reason to fabricate her account. Mr Banda suggested that Person B was lying to damage him because she was angry that he had disclosed personal information about her to a work colleague.
75. Person B confirmed in her statement that on 28 April 2018 she was informed by Mr Banda that he had informed a work colleague and that she was cross about this and asked Mr Banda not to disclose the information to any other work colleagues. There were no further references to this matter in any of the documentation, and Person B returned to work and continued to work alongside her work colleagues. The panel decided that it was not likely that Person B fabricated her account for this reason, and identified no other reason why she might have lied about Mr Banda.
76. While acknowledging that Person B’s actions and text messages on 28 April 2018 were surprising and appear to have been illogical, particularly for an experienced Social Worker, the panel nevertheless concluded that her account of the events of the 27 April 2018 was credible because she has been consistent and had no reason to lie.
77. On 9 May 2018 Person B sent the following text message to Mr Banda:

“I’ve not replied to your texts because i have tried to forget about what happened, but now that i am going to work tomorrow I’m a little worried. I have made the decision that I am not able to continue a relationship with you. What you did last weekend was wrong, and on both occasions I was really clear with you and I told you to stop and I said no many times, but you just carried on. We have to work together so please respect this decision and I don’t want to talk about this anymore.

Mr Banda replied:

“Okay I understand...just ignore and pretend nothing happened. I will not make it awkward for you in the office...”

78. This exchange of messages is consistent with Person B’s evidence and supports her account that she said “no” to Mr Banda, but that he continued.
79. Having reviewed the evidence, the Panel decided that Person B’s evidence was credible and reliable in relation to the events set out in particular 2.2.

80. The panel next considered the credibility and reliability of Mr Banda's evidence. The panel identified substantial inconsistencies and variations in the accounts given by Mr Banda.
81. In oral evidence to the panel Mr Banda mentioned for the first time that he had obtained a condom. This was not mentioned at all in his witness statement or in his interview by the police under caution where he said that the only intimacy that took place was kissing and touching.
82. In Mr Banda's witness statement dated 26 July 2021 he described that Person B and himself did not remove their clothes and this included in the bedroom. He stated *"while in the bedroom we lay in bed fully dressed as we were afraid the daughter would come in"*. This was repeated in Mr Banda's response to the allegation dated 10 January 2022 *"On both Friday and Sunday there was we did not take off our clothes or had vaginal or oral sex. We only kissed and touched each other and Person A [Mr Banda is here referring to Person B] only resisted because of her daughter refusing to sleep"*. These statements are inconsistent with Mr Banda's oral evidence to the panel in which he stated that he and Person B were unclothed and in bed, that it became heated, and that *"at that point I wanted to have sex with her, I had the condom with me but because we were disturbed that didn't happen"*.
83. In his oral evidence Mr Banda described the events with Person B on 27 April, but he did not describe that he was encouraging or directing Person B to masturbate him. When Mr Banda was asked in cross-examination and panel questions about paragraphs 30-31 of his witness statement in relation to Person A which describe consensual masturbation, he said that these paragraphs refer to Person B and not to Person A. In answer to panel questions Mr Banda acknowledged that the references in these paragraphs appear to be to Person A's statement rather than to Person B's statement, but he maintained his evidence that those paragraphs refer to Person B. While the panel acknowledged the passage of time since the events in question, it decided that Mr Banda's evidence was confused because he was not describing the truth of the events.
84. The panel also did not accept Mr Banda's explanation for his apology to Person B in his first text message on 28 April 2018. Mr Banda's account of events did not explain the text message he sent to Person B on 11 May 2018 *"sorry for the pain I caused you ...I really had great fun with you and your daughter...I feel bad I ruined it"*.
85. Having reviewed the evidence, the panel decided that Mr Banda's account of events was not credible or reliable.
86. The panel next considered whether, on the basis of Person B's account, the vaginal sex was non-consensual and was a sexual assault as defined in Section 3 of the Sexual Offences Act 2003.
87. In cross-examination Person B accepted that the penetrative sex that took place before Mr Banda left the room to get a condom was consensual. She was asked *"to be clear, you say the time before he got the condom was consensual"* and replied *"yes"*.
88. The panel decided that Person B had communicated to Mr Banda that her consent to sex was conditional on the use of a condom. He demonstrated by his actions that he

understood this condition, by leaving the room to obtain a condom and then showing it to Person B. Mr Banda then continued to penetrate Person B's vagina without using a condom and she told him to stop and said *"no you're hurting me"*. Mr Banda persisted with more forceful sex and Person B told him on several occasions that he should stop, that it's hurting. Mr Banda's response was *"Just let me carry on...just let me finish, I won't be long"*.

89. The panel decided that Person B did not consent to penetrative sex after Mr Banda returned with the condom. Mr Banda did not reasonably believe that Person B consented because he understood the condition that a contraceptive must be used and he persisted in his actions when Person B had repeatedly made clear that she wanted him to stop.

90. The panel therefore found particular 2.2(I) proved.

91. Person B described in her evidence that the forced masturbation was part of the sequence of acts which took place after Mr Banda had returned with the condom and she had repeatedly asked him to stop. During this act she continued to physically demonstrate the absence of consent. Mr Banda had his hand over hers and when he removed his hand she stopped masturbating him. At one stage when she tried to get off the bed he pulled her back onto the bed and said *"what are you doing? Let me finish"*. In the context of the sexual assault which had just taken place, the panel found that Person B had clearly communicated her lack of consent to Mr Banda and that he persisted. Mr Banda did not reasonably believe that Person B consented because there was nothing to indicate that Person B had changed her position and consented to continuing any acts of sexual intimacy and he had taken no steps to ask her whether she consented.

92. The panel therefore found particular 2.1(II) proved.

Particular 2.3

93. Person B's account of the events on 29 April 2019 was broadly consistent with her description of events in her ABE interview. In Person B's text message sent to Mr Banda on 9 May 2018 she stated that she had clearly asked Mr Banda to stop *"on both occasions"*. The panel found that she had no reason to lie, and that her account was credible and reliable.

94. In cross-examination Mr Banda accepted that he had touched Person B's breasts and that this happened in the lounge (consistent with Person B's description). Mr Banda said that Person B did not ask him not to. He also agreed that he took Person B's hand and pushed it down to his penis (over his jeans), but said that this was with her consent and that there were no signs of resistance or that Person B was uncomfortable.

95. On the basis of the evidence of Person B and Mr Banda's evidence the panel found that Mr Banda touched Person B's breasts and that he placed Person B's hand on his penis over his jeans.

96. The panel has found Mr Banda's evidence to be unreliable and not credible and it did not accept his evidence that there were no signs of resistance from Person B. The panel found that Person B physically and verbally indicated to Mr Banda that she did not consent. The panel also accepted Person B's account in that although she indicated lack of consent, she nevertheless remained lying next to him on the sofa "for some time" before she eventually got up off the sofa and went into the kitchen area of the room.
97. The panel next considered whether Mr Banda reasonably believed that Person B consented to his actions. The panel took the view that the context was important. Although Person B had been sexually assaulted on 27 April 2018, her communications with Mr Banda on 28 April 2018 were relaxed and friendly including emojis, kisses and "lol". She willingly agreed to go for dinner with him on 29 April with her young daughter. On 29 April 2018 Person B had entered into her bedroom with Mr Banda and had lain down on the bed. In her evidence she explained that her thought process was that *"my physical response was to lay down next to him but emotionally and mentally no I didn't choose to, no. I was put in a situation where my daughter was in a room next to me ...erm...and I'd rather save her from trauma not me so I just did what he was suggesting"*.
98. The panel considered that from Mr Banda's perspective, the messages he received from Person B on 28 April and for part of 29 April 2019 were friendly and positive towards him, despite the events that had occurred on 27 April 2019. This was relevant when the panel considered whether Mr Banda reasonably believed that Person B consented to the acts in particular 2.3. On Person B's own account some of her behaviour on 28 April 2018 was irrational. From Mr Banda's perspective, it would have been more difficult to interpret Person B's words and actions in the context of her apparent inconsistent behaviour, which included her communications on 28 April 2018, taking her daughter with him for dinner on 29 April 2018, following him into the bedroom and lying on the bed on 29 April 2018, and remaining on the sofa lying down next to him for some time before getting up. All this behaviour may have led him to believe that she might be more ambivalent than her words and actions indicated.
99. Having reviewed the sequence of events and bearing in mind the background context, the panel decided that Mr Banda's actions on 29 April 2018 did not amount to a sexual assault because Mr Banda reasonably believed that Person B did consent.
100. The panel therefore found particular 2.3 not proved.

Particular 3

101. The panel accepted the advice of the legal adviser and considered:

- (a). What Mr Banda knew or believed as to the facts and circumstances at the time he completed his CV and sent it to each of the two recruitment agencies

(b). In the context of Mr Banda's knowledge and belief as to the circumstances, was his conduct dishonest by the standards of an "ordinary decent person".

102. The panel decided that it was appropriate to give weight to the hearsay statements of CB and EM. Mr Banda agreed to the admission of these statements, and there was no inconsistency between these statements and Mr Banda's evidence to the panel.

103. The panel accepted Mr Banda's evidence that he told CB that there was an outstanding HCPC investigation, but that he was able to work. This was confirmed in the hearsay statement of CB.

104. The panel also accepted Mr Banda's statement that he spoke to a compliance officer at 4 Recruitment Services on 22 September 2018, when again he was open about the ongoing HCPC investigation. The panel noted Mr Banda did not speak to EM. This is consistent with EM's statement where he described that he was not responsible for compliance, and that there was a compliance team at 4 Recruitment Services which dealt with these issues. The panel noted an e-mail from EM to the HCPC dated 6 December 2018 in which EM stated *"We were not informed of the HCPC issues or his employment in Barnet"*. In the e-mail EM did not state that he had checked with the compliance team whether Mr Banda had spoken to them. EM's hearsay statement did not refer to this e-mail and did not clarify whether he spoke to any other individual at 4 Recruitment Services before writing the e-mail. The panel considered that the e-mail did not undermine the reliability of Mr Banda's evidence because of the uncertainties in the reference to "we" in the e-mail.

105. Mr Banda knew that there was a gap in his CV between January to March 2016 and that he had omitted the work he carried out as a social worker at Barnet, Haringey, and Oxford. He also knew that there was an ongoing HCPC FTP investigation which related to the short period when he worked at Barnet. Mr Banda also accepted in cross-examination that the short periods of employment at Barnet might have stood out on his CV and he might have been questioned if it had been included in his CV.

106. There was no evidence that either the recruitment agencies or the Council set out requirements or had policies on the completion of CVs, or that Mr Banda understood that there was any requirement on him to include every engagement that he had undertaken as an agency employee.

107. Mr Banda's explanation for his decision to omit the Barnet period of employment is that at the time he completed his CV he did not consider that it was relevant experience for the role. The panel found that this explanation was credible because:

(a). Mr Banda also excluded from his CV short periods of employment at Haringey and Oxford in the period January to March 2016;

(b). There were other gaps in Mr Banda's CV;

(c). Mr Banda was open and transparent when he informed CB that there was an ongoing HCPC investigation, but that he was permitted to work;

(d). Mr Banda was similarly open and transparent when he informed a compliance officer at 4 Recruitment Services that there was an ongoing HCPC investigation.

108. Having decided that Mr Banda was open and transparent with both recruitment agencies and did not intend to deceive them, and that his decision to exclude the Barnet employment from his CV was the same reason as his decision to exclude the Haringey and Oxford employment (that they were short periods of employment and not relevant), the panel decided that the conduct in sub-particulars 1.1 and 1.2 was not dishonest conduct by the standards of an ordinary decent person.

109. The panel therefore found particular 3 not proved.

Finding and reasons on grounds

Ms Ferrario submitted that the facts found proved at paragraph 2.2 were sufficiently serious to amount to the statutory ground of misconduct. She referred to the submissions set out in Social Work England's statement of case.

111. Mr Banda told the panel that he believed that if he had legal representation the case would have taken a different direction. He said that he had not slept for days, and had not eaten and that perhaps he was not speaking a lot of sense. The panel recognised that Mr Banda was subject to the stress of the proceedings and that he had had a short period of time to reflect on the panel decision.

112. In his submission to the panel Mr Banda invited the panel to consider the context, particularly that Person B was a senior Social Worker and he suggested that there might also be questions about Person B's own ability to safeguard given that despite her allegations against him in relation to events on 27 April 2018, she had nevertheless taken her own daughter out to a restaurant with him on 29 April 2018.

113. Mr Banda suggested that a relevant background factor was the cultural differences concerning personal relationships between men and women between Africa and the UK. Mr Banda was born in Zambia and studied there for several years before moving to Belgium. He worked as a Social Worker in Belgium from 2010 to 2014 and at this time he was married. From June 2014 he worked as a Social Worker in the UK. By 2018 Mr Banda had considerable experience of living in western countries and working in a professional role where understanding of different backgrounds and cultures is required. In his evidence to the panel which related to Person B Mr Banda had not referred to cultural differences or suggested that there was miscommunication or misunderstanding between himself and Person B.

114. In its decision on the facts the panel decided that Mr Banda did not reasonably believe that Person B consented to the continuation of sexual acts. The context, as presented by Mr Banda in his submissions, did not lessen the seriousness of that finding.
115. The panel accepted the advice of the legal adviser. As explained in *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 misconduct *“can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will occur outwith the course of professional practice itself, but which brings disgrace upon the [professional] and thereby prejudices the reputation of the profession”*. There is no statutory definition of misconduct, but guidance was given in the case of *Roylance v GMC* that *“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”*.
116. The panel noted that a breach of standards is not conclusive, but may be part of the panel’s consideration of the circumstances. It also noted that the ‘falling short’ must be ‘serious’ (*Nandi v GMC*).
117. The panel decided that Mr Banda’s conduct in particular 2.2 amounted to a breach of the following standards:
- HCPC Standards of Conduct Performance and Ethics
- Standard 9.1 “You must make sure that your conduct justifies the public’s trust and confidence in you and your profession”
- HCPC Standards of Proficiency for Social Workers
- Standard 3.1 “understand the need to maintain high standards of personal and professional conduct”
118. The panel considered that the sexual assaults found proved at particular 2.2 are reprehensible and disgraceful conduct which damages public trust and confidence in the profession. From the perspective of an informed member of the public, Mr Banda’s conduct involved a serious departure from the legitimate expectations placed on all citizens to respect certain rights of others. Mr Banda’s conduct damages public confidence in the profession because he overstepped the fundamental requirement placed on Social Workers to behave appropriately in their personal relationships.
119. Social Workers hold a respected and trusted position in society and work with the most vulnerable members of society. It is essential that Social Workers can be trusted to have good judgement and be able to empathise with and respect the views of individuals from different backgrounds. Mr Banda’s behaviour involved a misjudgement in choosing to override the clearly expressed wishes of Person B, an inability to control his own wishes or impulses, and a lack of respect for Person B’s freedom to choose whether to participate in sexual acts and in what circumstances. This includes her freedom to choose when to

withdraw consent if previously given. His behaviour was inconsistent with the values and principles which underpin social work.

120. The behaviour did not involve abuse of a senior position in the workplace, but there was a breach of the trust that Person B placed in Mr Banda as a Social Worker and colleague to behave appropriately when she invited him into her home.
121. The sexual assault had a detrimental long-term impact on Person B. She was absent from work from June to November 2018 and described herself as being in a dark place at that time. When she recommenced work she stepped away from front line work and moved to a different team. She had been working towards completing her Practice Educators Award, but this was put on hold. She described that she is prescribed anti-depressants and sleeping tablets, and that she has lost confidence and self-worth. She is supported by an Independent Sexual Abuse Adviser and is trying to work towards “eliminating the power that feelings of shame and guilt have over me”.
122. The panel decided that Mr Banda’s conduct in particular 2.2 was deplorable from the perspective of members of the public and members of the profession, that it fell well below the expected standards of personal conduct for Social Workers, and that it was sufficiently serious to amount to misconduct.
123. The panel decided that Mr Banda’s conduct in particular 1 did not amount to misconduct because he did not act dishonestly and did not intend to deceive the recruitment agencies.

Finding and reasons on current impairment

124. Ms Ferrario submitted that Mr Banda’s fitness to practise is currently impaired. She submitted that there was no evidence to reassure the panel that Mr Banda would not similarly misjudge a situation again and that there remains a risk that Mr Banda may repeat similar conduct. Ms Ferrario also submitted that a finding of current impairment was required to mark the nature of Mr Banda’s misconduct, bearing in mind that the reputation of the profession is paramount.
125. In Mr Banda’s written statement dated 10 January 2022 he stated that since 2016 he has carried out learning activities on relationships with colleagues and how that may impact on the work environment. He said that he has learnt that flirtation with colleagues can be regarded as sexual harassment.
126. Mr Banda provided information to the panel about the work he has undertaken since the referrals in 2018. He has continued to work as a Social Worker through agencies and has worked in different parts of the UK and in Belgium. His work has included child protection and safeguarding. Some of his appointments have been terminated because of the ongoing Social Work England investigation. Mr Banda told the panel that he last worked as a Social Worker in January 2022, but that he has not worked as a Social Worker in the last four weeks. He is currently undertaking a Masters’ degree in International Business. The panel

took into account Mr Banda's previous good character and the positive references provided by social work employers about his practice.

127. In his submissions to the panel Mr Banda submitted that he is fit to practise as a Social Worker. He submitted that he is a good social work practitioner and that any mistakes in his personal life did not impair his practice. He described his background as a theology student, his commitment to caring for other people, and his experience of undertaking a "pastoral role" as aspects of his professional work. Mr Banda referred to the length of time that has elapsed since the referrals, a period of four years. Mr Banda told the panel that he felt he needed to develop as a person, and that he had not had the opportunity to learn about British culture in relation to personal relationships. He told the panel that he believed Social Work England should provide development opportunities for Social Workers in his position, that is, those who come to work in England from different cultures. He said that he had undertaken modules on cultural differences in his Masters' degree and that he had undertaken a training course on domestic violence.
128. When Mr Banda was asked about any thoughts he might have about the impact of the panel's findings on Person B and on the profession, he spoke about confusion in his witness statement, and the fact that he was not represented by a lawyer. He said that he did understand the panel's views and agreed with them, but he did not agree with the detail of the allegations.
129. Mr Banda told the panel that since 2018 he has not entered into any relationships with women. He said that he would now seek to obtain explicit consent within a relationship and would gather evidence of explicit consent.
130. The panel accepted the advice of the Legal Adviser. It assessed Mr Banda's fitness to practise at today's date, having regard to the need to protect the public which includes the wider public interest.
131. The panel considered that the conduct it had found proved at particular 2.2 revealed attitudinal issues which are not easily remediable. In a case of this nature the panel would expect to see substantial information, including independent evidence, of insight and remedial action, before it could be satisfied that there is no ongoing risk of repetition.
132. The panel considered the level of Mr Banda's understanding and insight. The panel recognised that he was subject to the stress of the proceedings and that he had little time to consider the serious findings against him.
133. From Mr Banda's submissions the panel noted that he appeared to be able to accept that the panel had made a serious finding against him and that there was a need for him to take responsibility for that and to engage in personal development and learning.
134. The panel considered Mr Banda's written statements and submissions and decided that he had demonstrated very little understanding of the nature of the panel's finding or its relevance to the profession. In Mr Banda's written submissions he focused on the dangers of relationships with colleagues and the potential impact on the work environment. This case does not involve criticism of Mr Banda for engaging in a personal relationship with a

work colleague; the panel finding is that he sexually assaulted a colleague. In his submissions Mr Banda spoke about the need to act differently in obtaining explicit consent from a woman in future relationships. The panel's finding is not that Mr Banda did not obtain explicit consent from Person B, but that he continued to pursue sexual acts with her when he knew that she did not consent.

135. In his submissions to the panel Mr Banda had a tendency to focus on the negative impact of the proceedings on himself and to deflect responsibility to others. He did not demonstrate to the panel that he had considered the impact of the sexual assault on Person B. His submissions did not address the impact of a finding of sexual assault on public trust and confidence in social workers and the profession.
136. While the panel acknowledged that Mr Banda appeared to be willing to accept the panel's decision and to learn and to change his behaviour, it considered that he had demonstrated little insight.
137. Mr Banda has not taken steps to address his past behaviour, other than those set out in his written witness statement and the training courses mentioned in his submissions. Mr Banda did not provide the panel with written documentation relating to the training courses, or his reflective learning from the courses, to enable the panel to assess whether they addressed the relevant issues. The panel concluded that there is no evidence that Mr Banda has remedied his past behaviour.
138. Having decided that Mr Banda has demonstrated little insight, and that he has not remedied his past behaviour, the panel decided that there remains a risk that Mr Banda may repeat similar behaviour. A finding of current impairment is therefore required to protect members of the public from the risk of harm.
139. The panel next considered the need to maintain public confidence in social workers and the profession and to uphold the expected standards of social workers in England in their personal life. The panel decided that the sexual assault was such a serious departure from the required standards for social workers that it was necessary for the panel to mark the breach of standards by a finding of current impairment. This finding sends a clear message to members of the profession and members of the public that Social Workers must maintain high standards of personal conduct. Social Workers must be self-aware and understand how their behaviour in their private life might be viewed by others.
140. The panel considered the perspective of an informed member of the public. Mr Banda's behaviour is serious in itself and it also calls into question his professionalism and judgement as a Social Worker. Social Workers occupy positions where they are required to appropriately use their power and authority, making good judgements and decisions. Informed members of the public would be concerned that the attitude demonstrated by Mr Banda in his behaviour towards Person B, might impact on his social work practice because it involved such a serious error of judgement. Informed members of the public would be shocked if the panel did not make a finding of current impairment, given the nature and gravity of the conduct, as summarised in the panel's decision on misconduct.

141. For these reasons, the panel decided that the public confidence in the profession would be undermined if the panel did not make a finding that Mr Banda's fitness to practise is impaired.
142. The panel decided that Mr Banda's fitness to practise is impaired, having regard to the ongoing risk of repetition, and the public interest in upholding public trust and confidence in the profession, and upholding the required standards for social workers.

Decision on sanction

143. Ms Ferrario submitted that the appropriate sanction was a removal order. She referred the panel to paragraphs in Social Work England's sanctions guidance (SG). She submitted that the sanction of last resort was appropriate because of the nature and gravity of Mr Banda's misconduct, his consistent lack of insight, and the high risk of repetition. She submitted that any lesser sanction would undermine public trust and confidence in the profession.
144. Mr Banda submitted that it was not necessary to suspend him or remove him from the Register and that he should be supported by Social Work England in his personal development. Mr Banda repeated many of the points he had made in his earlier submissions to the panel. He referred to the quality of his work as a Social Worker and the absence of any previous findings of misconduct. He suggested that it was unfair that he had been investigated by Social Work England when Person B had not been investigated. He mentioned the four years that have elapsed since the events in question and the negative impact this has had on him.
145. Mr Banda also referred again to cultural differences. He drew a distinction between the way consent is viewed or expressed in the UK as compared with some other cultures. He said that in some other cultures when a woman says "no" she means "yes". He told the panel that in other cultures, when a woman is in a relationship with a man or married they feel a man can say or do whatever they want to do because they're married. He said that Social Work practice and attitudes to consent are different in the EU, where he was educated and trained, from in the UK. In explaining cultural differences to the panel Mr Banda said that he had lived in the UK and that he knew that when a woman says "no" that is what she means. Although Mr Banda told the panel that he accepted the finding against him, he said that Person B *"didn't tell me to stop"*.
146. Mr Banda gave the panel information about his personal circumstances. He has a twelve year old daughter and has responsibility for paying rent and bills. He is also responsible for supporting a significant number of family members in Africa who are dependent on him and rely on him for support with school fees.
147. The panel accepted the advice of the Legal Assessor. Her advice included reference to the case of *Bolton v the Law Society* [1994] 1WLR 512.
148. The primary function of any sanction is to protect the public. This includes protecting the health, safety, and welfare of members of the public, maintaining public trust and

confidence in the profession, and maintaining and upholding the required standards for Social Workers in England. The panel applied the principle of proportionality, balancing Mr Banda's interests against the public interest.

149. The panel did not accept that "cultural differences" mitigate or explain Mr Banda's conduct. The panel took into account that Mr Banda has spent many years living and working in England. It has made a clear finding of fact that Mr Banda did not reasonably believe that Person B consented to the continuation of sexual acts.

150. In its deliberations the panel identified the following mitigating factors:

- Mr Banda is a competent Social Worker (as confirmed in references which describe him having a child centred approach) and there are no previous regulatory findings against him;
- Incidents occurring in a single timeframe.

151. The panel identified the following aggravating factors

- Mr Banda breached the trust that Person B placed in him as a fellow professional Social Worker and a colleague;
- The actual and long-term harm to Person B;
- The sexual assault took place in Person B's home where she was entitled to feel safe and her daughter was in the next room.
- As Person B persisted in telling Mr Banda to stop and physically pushing him away, Mr Banda became more forceful.

152. The panel considered that any form of sexual misconduct is serious for Social Workers and that the conduct in this case is at the top end of the scale of seriousness. It was a serious sexual assault involving penetrative sex without Person B's consent. The conduct in particular 2.2 was sustained over a period of time, and it included forceful acts such as pulling Person B's hair. Mr Banda has demonstrated little insight and in his submissions to the panel he sought to blame and criticise others and justify his conduct, rather than taking personal responsibility.

153. The panel did not accept Mr Banda's submission that the findings against him were not relevant to his practice as a Social Worker because they concerned his private life. In their professional work a Social Worker might receive a report from a service user who was in distress following a sexual assault. Given the level of insight demonstrated by Mr Banda, it did not appear to the panel that he understood the basics of what is right and wrong within relationships between adults. The panel was concerned that given Mr Banda's attitude and understanding of consent issues, he might fail to recognise risk and harm if a similar situation were to be disclosed to him during the course of his work. Mr Banda's conduct is therefore relevant to his standard of practice as a Social Worker, even though it occurred in Mr Banda's private life.

154. The sanction should be the least restrictive which is sufficient to provide the necessary degree of public protection. The panel therefore considered the sanctions in ascending order of severity.
155. The panel considered the options of taking no action, giving advice, or imposing a warning. These options do not restrict Mr Banda's registration and therefore would be insufficient to protect the public, given that the panel has concluded that there is a risk of repetition of similar misconduct. These options would also be entirely insufficient to maintain public confidence in the profession and to mark the seriousness of Mr Banda's departure from the expected professional standards.
156. The panel next considered the option of a conditions of practice order. The panel decided that conditions of practice would be an insufficient sanction to mark the gravity of Mr Banda's misconduct which involves sexual assault of a colleague. The panel also considered that conditions of practice would not be appropriate and would be unworkable because the misconduct did not occur during the course of his practice and involved a behavioural and attitudinal failing.
157. The panel next considered the option of a suspension order. The guidance in the SG is that a suspension order may be appropriate where the case falls short of requiring removal from the register.
158. The SG guidance for a removal order is that this sanction "must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England".
159. The panel decided that the mitigating features carried little weight when balanced against the nature and gravity of the misconduct. The quality of Mr Banda's work as a Social Worker might carry weight in the overall balance of considerations in a case involving conduct of a less serious nature, but in this case the misconduct directly impacts on public trust and confidence in the profession.
160. The panel's view was that the behaviour in this case was not remediable by Mr Banda attending training courses. Given Mr Banda's position, as outlined to the panel in his submissions, the panel could not envisage how he might remediate his misconduct and persuade a panel that there was not an ongoing risk of repetition. The panel detected that Mr Banda was shocked by the panel's findings, but it observed very little sign that he understood the very difficult task of remediating the misconduct. The panel considered that there was little prospect that he was capable of remediating his misconduct, given the low level of insight he had demonstrated.
161. The panel also decided that even if the risk of repetition were low, the misconduct of sexually assaulting a colleague is fundamentally incompatible with registration as a Social Worker in England. In reaching this decision the panel had in mind the nature and gravity of the misconduct as explained in the panel's decision on misconduct and the panel's assessment that the conduct is at the high end of the spectrum of gravity of sexual

misconduct. The panel must send a very clear message to the profession and to the public that Social Workers must not sexually assault their colleagues and that the regulator will take action, even if this behaviour occurs in their private lives. A suspension order would not send a sufficiently clear message, and it would not be sufficient to maintain public confidence in the profession.

162. When it considered the option of a suspension order or the more restrictive option of a removal order the panel recognised that suspension would offer Mr Banda the prospect of returning to his chosen profession. This may be less detrimental to his financial and reputational interests than a removal order. The panel recognised that the imposition of a sanction which prevents Mr Banda working as a Social Worker would have a serious negative financial impact on him and on other individuals who are dependent on him. Mr Banda has consistently worked as a Social Worker over the last four years.
163. The panel considered that it was unfortunate that this case had not been brought to a final hearing until nearly four years after the events in question. Mr Banda has been subject to the ongoing investigation throughout most of this period and this had a negative impact on him as he described in his submissions. The panel acknowledged the negative impact of the four year investigation and the negative impact of the imposition of a removal order, which is a sanction of last resort. However, the panel decided that Mr Banda's misconduct was so serious that Mr Banda's interests were outweighed by the need to protect the public, which includes maintaining public confidence in the profession.
164. The panel considered that this was a case to which the guidance in the SG for a removal order clearly applied: no outcome other than removal would be sufficient to protect the public, maintain confidence in the profession and maintain proper professional standards for social workers in England. The panel decided that the appropriate and proportionate sanction is a removal order. This sanction sends a clear message to the public and members of the profession that it is wholly unacceptable for registered social workers to sexually assault a colleague. Such conduct does not justify the trust and confidence that members of the public place in social workers.

Interim order

165. Ms Ferrario made an application for an Interim Suspension Order, to cover the appeal period before the Sanction becomes operative and the time that any appeal might take to be concluded.
166. Mr Banda opposed the application for an Interim Suspension Order. He submitted that an order was not necessary because he has been practising as a Social Worker without restriction for the last four years. He told the panel that permitting him to work as a Social Worker until the substantive order comes into force would allow him some time to gain financial stability.

167. The panel accepted the advice of the legal adviser and considered whether an order was necessary for the protection of the public or was in Mr Banda's own interests. It applied the principle of proportionality, balancing Mr Banda's interests against the need to protect the public.
168. The panel considered whether to impose an interim order. The panel acknowledged that Mr Banda has been practising as a Social Worker since 2018. The position has now changed because the panel has made findings. In those findings the panel concluded that there remains a risk of repetition of similar conduct and a need to protect the public from the risk of harm. The panel also identified a risk that Mr Banda's error in judgment might affect his social work practice. The panel decided that it would be wholly incompatible with those earlier findings and the imposition of a Removal Order to conclude that an Interim Suspension Order was not necessary for the protection of the public and otherwise in the public interest.
169. The imposition of an interim order will have a detrimental impact on Mr Banda for the reasons he explained, but the panel decided that the need to protect the public outweighed his interests. The panel considered the option of imposing interim conditions of practice, but decided that there were no conditions which would address the risk that Mr Banda might behave outside the workplace in a way that damages public confidence in the profession. Accordingly, the panel concluded that an Interim Suspension Order should be imposed on public protection and public interest grounds.
170. The panel decided that it is appropriate that the Interim Suspension Order be imposed for a period of eighteen months to cover the appeal period. When the appeal period expires, this Interim Order will come to an end unless there has been an application to appeal. If there is no appeal the Removal Order shall apply when the appeal period expires.

Right of Appeal

171. Under paragraph 16 (1) (a) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social Worker may appeal to the High Court against 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.
172. Under paragraph 16 (2) schedule 2, part 5 of the Social Workers Regulations 2018 an appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.
173. Under regulation 9(4), part 3 (Registration of social workers) of the Social Workers Regulations 2018, this order can only be recorded on the register 28 days after the Social

Worker was informed of the decision or, if the social worker appeals within 28 days, when that appeal is exhausted.

174. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.

Review of final orders

175. Under paragraph 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:

- 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.

176. Under rule 16 (aa) of Social Work England's fitness to practise rules, a registered 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.