

Social worker: David Moss

Registration number: SW100407

Fitness to Practise

Final Hearing

Dates of hearing: 20 January 2025 to 24 January 2025

Hearing venue: Remote hearing

Hearing outcome: Fitness to practise impaired, removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) (“the regulations”).
2. Mr Moss did not attend and was not represented.
3. Social Work England was represented by Mr Ashraf Khan of Counsel instructed by Capsticks LLP.

Adjudicators	Role
Sara Nathan	Chair
Stella Elliott	Social worker adjudicator
Melissa Forbes-Murison	Lay adjudicator

Poppy Muffett	Hearings officer
James Dunstan	Hearings support officer
Dido Ofei-Kwatia	Legal adviser

Service of notice:

4. Mr Moss did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Mr Khan that notice of this hearing was sent to Mr Moss by email and special delivery service to the respective addresses provided by the social worker (namely the registered addresses as they appear on the Social Work England register). Mr Khan submitted that the notice of this hearing had been duly served.
5. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of the final hearing dated 17 December 2024 and addressed to Mr Moss at both the email and postal address which they provided to Social Work England;
 - An extract from the Social Work England Register as of 17 December 2024 detailing Mr Moss’s registered address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 17 December 2024 the writer sent by email and special delivery service to Mr Moss at the address referred to above: notice of hearing and related documents;
 - A copy of the Royal Mail Track and Trace Document indicating “signed for” delivery to Mr Moss’s address at 11.46am on 18 December 2024.
6. The panel accepted the advice of the legal adviser in relation to service of notice. Having had regard to Rules 44 and 45, and all of the evidence before it in relation to the

service of notice the panel was satisfied that notice of this hearing had been served on Mr Moss in accordance with the Rules.

Proceeding in the absence of the social worker:

7. The panel heard the submissions of Mr Khan on behalf of Social Work England. Mr Khan reiterated that notice of this hearing had been duly served and that no application for an adjournment had been made by Mr Moss. Mr Khan drew the panel's attention to an email dated 17 December 2024 at page 49 of the service and supplementary bundle in which Social Work England's case manager confirmed he had spoken to Mr Moss about the hearing timetable and that at that point Mr Moss had still not decided if he was going to attend the hearing. Mr Khan further submitted that Mr Moss had failed to give any explanation as to the nature and circumstances surrounding his absence and that he had voluntarily absented himself. The panel was invited to proceed in Mr Moss's absence given that notice had been served effectively as per pages 3 and 12 of the service and supplementary bundle.
8. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 and the case of *General Medical Council v Adeogba [2016] EWCA Civ 162*. The panel was also reminded of Social Work England's guidance 'Service of notices and proceeding in the absence of the social worker'.
9. The panel considered all the information, and had regard to the fact that Mr Moss [PRIVATE]. However, they also noted that he had provided no additional medical evidence to explain his absence. Further, the panel noted the fact that a vulnerable witness was in attendance, as was another witness, that there were costs to Social Work England if the matter was adjourned in addition to any witness's ability to recall events that occurred 5 years previously.
10. The panel, which was satisfied that the service of notice was effective, decided that Mr Moss was or should have been aware of today's hearing. The panel had no reason to believe that an adjournment would result in Mr Moss's attendance, nor had he asked for one. The panel therefore concluded that Mr Moss had chosen voluntarily to absent himself. Having weighed the interests of Mr Moss in regard to his attendance with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel decided to proceed in Mr Moss's absence.

Preliminary matters:

Hearing in private

11. Mr Khan applied for part of the hearing to be heard in private, the scope was limited to evidence around health matters and any information that could identify service user 1's children. Mr Khan submitted that the panel consider such details in private to protect service user 1's private life under Rule 38(a)(ii).

12. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. The panel were reminded of their discretionary power to hear part of the hearing in private where appropriate, having due regard to any of the parties' welfare. The panel was reminded of the need to balance the protection of any affected party's welfare with the public interest in open justice.
13. The panel decided that it was appropriate to exercise its discretion and hear details relating to service user 1's childhood, health, and her children in private. The remainder of the case would be heard in public in accordance with the public interest in open justice.

Special measures

14. In the absence of Mr Moss, the panel decided to stand down the Special Counsel who had been commissioned by Social Work England in adherence to Fitness to Practise Rules 2019, Rule 42(b).

Background:

15. Mr Moss was first registered as a social worker on 20 August 2014. He worked for Wakefield Council between 28 October 2019 and 15 March 2020, as an agency social worker. Mr Moss worked within the Child Protection Team at Castleford under the management and supervision of Team Manager, Ms Lancaster.
16. He managed a caseload of 'child in need', 'child protection' and 'looked after child' cases. Mr Moss was responsible for making sure children were safeguarded and that vulnerable families got the support they required. It was important that good working relationships were maintained and boundaries were not overstepped.
17. As part of his employment with Wakefield Council, Mr Moss was provided with a work mobile phone, the number ending in 4291.
18. On 19 January 2021, Social Work England received a referral regarding Mr Moss. The referral was made by Airedale Children's Centre, Airedale, Castleford, West Yorkshire. A concern had been raised that he had crossed professional boundaries with Service User 1, for whom Mr Moss was the allocated social worker from December 2019 until 15 March 2020, when he stopped working at Wakefield Council.

Allegations:

1. Whilst registered as a Social Worker between January 2020 and 6 February 2020, you failed to maintain appropriate professional boundaries with Service User 1 in that:
 - a. you visited Service User 1 on 10 January 2020 without professional reason;
 - b. you took Service User 1 to Costa Coffee on or around 13 January 2020 without good reason;

- c. you provided Service User 1 with your personal mobile telephone number on 29 January 2020 without good reason;
- d. you made one or more inappropriate comments, or used words to the effect of, to Service User 1 as set out in Schedule 1;
- e. you sent Service User 1 one or more inappropriate text messages as set out in Schedule 2.

2. Your conduct in relation to paragraph(s) 1a, 1b, 1c, 1d and/or 1e above was sexually motivated.

3. Whilst registered as a Social Worker between January 2020 and 6 February 2020, you failed to maintain appropriate professional boundaries with Service User 1 in that you disclosed confidential information about another Service User's case.

4. During a supervision meeting with SL on 16 January 2020, you stated that you had not seen Service User 1 since 3 January 2020.

5. Your conduct in paragraph 4 above was dishonest in that you deliberately attempted to conceal your inappropriate contact with Service User 1 since 3 January 2020.

Admissions:

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

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

20. Following the reading of the allegations the panel considered the admissions that Mr Moss had made in writing. The panel accepted the advice of the legal adviser and took the view that the admissions as made were not sufficiently specific for the panel to accept, considering how Mr Moss had couched them. As a result, the panel decided it would make decisions about all of the allegations individually in line with Rule 32c(i)(a).

Summary of evidence:

21. The panel was provided with a written statement of case dated 17 June 2024 which set out the allegations and evidence upon which Social Work England relied. The supporting evidence was presented in various bundles entitled Schedule 1, Schedule 2, ID Key, witness statements, exhibits and service and supplementary bundles.
22. Mr Khan set out a summary of the case and went on to call the first witness, service user 1 adopted her witness statement as evidence in chief. She gave supplementary evidence and gave information about her nuclear family and added specific information on her children for whom she has parental responsibility. Service user 1 also talked extensively about the complex issues she experienced that led to her first having contact with Mr Moss, who was her allocated social worker during the material period.
23. Service user 1 was not able to remember exactly how many visits she had with Mr Moss, but she was able to furnish detail of two specific visits of which she was sure. The first of those was when Mr Moss came to her home. She said that Mr Moss looked around her home and wanted to know how she coped. She said Mr Moss sang her praises as a mother even though he was aware of the difficulties she was experiencing, her desperation because of her situation and her previous involvement with social services. Mr Moss had indicated on that visit, that he would like to see how she managed in the park with the children. However, service user 1 stated that no such outing ever happened with Mr Moss.
24. The second visit that she remembers was when Mr Moss came to pick her up from home and took her to Costa coffee whilst the children were at nursery. She said Mr Moss told her it was nice for her to be out and away from the children. [PRIVATE]. Service user 1 went on to say that when Mr Moss dropped her off at her children's nursery, he told her that she was "absolutely gorgeous". She stated that Mr Moss had been flirty with his eye contact and told her that she was a good mum.
25. Service user 1 gave evidence that the nature of Mr Moss's text messages changed after the Costa meeting. Mr Khan took her through all the messages systematically and she confirmed that the messages in blue were hers and those in grey were from Mr Moss. Service user 1 confirmed that over time the messages became more romantic in context and she admitted that they flattered her and made her feel good at the time, such that she even sent him a picture of herself.
26. Service user 1 and Mr Moss continued to exchange messages some of which were outside of work hours and on his personal phone. Service user 1 could not be sure which of the two numbers she had saved as David 2 and Silver Fox were his personal and work number. There was a message from service user 1 asking for Mr Moss's personal number and a message from him on Wednesday 29 January 2020 at 15:03 sharing it.
27. In addition to the messages service user 1 stated in evidence that they would also have telephone conversations. In one such phone call Mr Moss was said to have

commented on a case that he had in which he had to remove children from the care of their alcoholic mother and that it was a particularly hard thing to have to do. Service user 1 said Mr Moss would repeatedly compare her to others and tell her how great she was. She did not remember if Mr Moss told her the name of his client who had her children removed. Later in evidence, she said he had given her no name nor identifying information about the parties in this other case.

28. Service user 1 explained that in some of his messages Mr Moss would share his problems with her even though in her view he knew she was vulnerable and close to a breakdown. She explained that the various emotions and feelings she had at the time, ranged from feeling flattered to feeling as though she was being groomed.
29. Service user 1 also stated that it was whilst she was still having problems that Mr Moss closed her case even though she needed help and support. She told the panel she thought this was because he wanted to pursue a relationship with her, not because the case should be closed.
30. She was convinced after he sent the message “I’m sat here in my underpants with my work lap top on but too tired to work really. I’m enjoying texting you a lot xx (heart in eyes emoji)” that he knew he had crossed the line as he then said “You’re stunning, you’ve a gorgeous smile, a brilliant sense of humour – what’s not to like (heart in eyes emoji) (all of that not meant in a non-creepy way btw)Xx.”
31. Soon after this she spoke to a friend who told her the relationship was inappropriate. Service user 1 indicated it was after she was referred to the Well Women charity, received therapy and recognised that what happened was not right, that with support she pursued her complaint. By this time the contact with Mr Moss had ended some 10 months earlier, on 6 February 2020.
32. In response to questions from the panel, service user 1 confirmed that she did not think the Costa meeting was about her parenting and that Mr Moss was only concerned about her, she said the tone of the text messages, which had been primarily about the children, changed after the meeting in Costa, and became very much more flirtatious and inappropriate.
33. Mr Khan’s second witness to give evidence was Ms Lancaster Mr Moss’s team manager during the material period. She adopted her witness statement in chief. Mr Khan led her through supplementary questioning in which she confirmed that social workers are not expected to give out their personal numbers and during the material period Mr Moss’s work phone was always operational. In her view the text messages were inappropriate and flirtatious in manner, they gave the impression Mr Moss sought to have an inappropriate relationship with service user 1. Ms Lancaster felt Mr Moss had crossed professional boundaries and wanted to close the case for personal gain.
34. Ms Lancaster stated that she had her only supervision of Mr Moss about this case on 16 January 2020. She was not aware of all of the visits as recorded at page 163 of the exhibits bundle, as she had relied on Mr Moss to tell her when he had visited. She stated

that it is only significant events that get recorded in the chronology and that is why some of the meetings are missing at page 188 of the exhibit bundle. But, the visits were recorded where they should have been, and it would appear she had not accessed the record of visits at the time of supervision.

35. In response to questions from the panel Ms Lancaster confirmed that an assessment cannot be completed after one visit and that Mr Moss had done two that she was aware of at the time of supervision. She also confirmed that on reflection it is not unusual for a social worker to see a service user more frequently quite early on, in order to get enough material for the assessment report, nor was it unusual to want to see them alone or in a coffee shop. The issue in this instance was that these actions in the context of the messages Mr Moss has sent to service user 1 made everything different.
36. Ms Lancaster said that Mr Moss had breached confidentiality by sharing information about his case where an alcoholic mother had her children removed. She felt this was a breach as the locality was so tight knit that service users could easily connect with one another and identify the person.
37. Ms Lancaster clarified her earlier evidence and confirmed that she was not aware Mr Moss had undertaken any visits to service user 1 after the assessment.
38. Finally, Ms Lancaster confirmed that she had previously worked with Mr Moss without issue. However, when he was under her management during the material period, there was a breakdown in their relationship which led to his agency contract that was already expiring not being renewed.
39. The panel saw a 50-page bundle entitled 'Social worker's responses'. This bundle included correspondence with Mr Moss and [PRIVATE]. Mr Moss admitted to misconduct and impairment on the basis that he failed to maintain appropriate professional boundaries. He accepted that he welcomed a friendship with service user 1 that was wholly and completely unprofessional although he maintains the visit in allegation 1 was for professional purposes. Mr Moss denied that his conduct was sexually motivated and also denied allegations 3, 4 and 5. He said he may have forgotten the dates of meetings with service user 1, but "it is possible I got the date wrong, but I have never tried to intentionally mislead SL [Ms Lancaster] about this case."
40. Mr Khan made closing submissions in which he recapped the case on behalf of Social Work England. He invited the panel to find the facts proven in their entirety, stating that good evidence had been put forward that was credible and reliable. In line with the case of *Bason v GMC [2018] EWHC 505 (Admin)*, Mr Khan urged the panel to find that allegation 2 was proven and Mr Moss's conduct was sexually motivated. Additionally, he also invited the panel to find Mr Moss had been dishonest as per allegations 4 and 5.

Finding and reasons on facts:

41. The panel accepted the advice of the legal adviser, who reminded it where facts have been admitted they are to be found proven. Where facts are in dispute the panel is

required to go on to decide those facts. The burden to prove each allegation rests with Social Work England and the panel must be satisfied on the balance of probabilities.

42. In relation to the alleged sexual motivation, the panel was advised in line with the case of *Harris v GMC (2021) EWCA Civ 763* and reminded that when allegations are presented as being sexually motivated it will be the sexual motivation which is the basis of the alleged misconduct.
43. The legal advisor reminded the panel about the about the two-limb test in dishonesty allegations. This is derived from the case of *Ivey v Genting Casinos (2017) UKSC 67*.
44. Finally, the legal advisor reminded the panel that it was open to it to draw an adverse inference in relation to Mr Moss's failure to attend as per the case of *Kuzmin v GMC (2019) EWHC 2129*.
45. In reaching its decision the panel considered all of the evidence before it and were of the view that it had heard good and reliable evidence from both of the live witnesses. It also considered the responses contained in the social worker response bundle and acknowledged that Mr Moss had provided records of the meetings that took place with service user 1.

Particular 1a

Whilst registered as a Social Worker between January 2020 and 6 February 2020, you failed to maintain appropriate professional boundaries with Service User 1 in that: you visited Service User 1 on 10 January 2020 without professional reason;

46. The panel found this allegation not proven. It found that there was no evidence that demonstrated Mr Moss's visits during this period were not professional reasons. The panel highlighted the fact that the first meeting was likely to have been busy because service user 1's three children were present. The panel accepted Ms Lancaster's evidence that it was reasonable to have a second meeting in a relaxed environment to further the completion of an assessment, and this was indeed standard practice. The panel also took note of the fact that in evidence service user 1 stated that things changed after the visit to Costa and it was after this point that the inappropriate messages began.

Particular 1b

Whilst registered as a Social Worker between January 2020 and 6 February 2020 you took Service User 1 to Costa Coffee on or around 13 January 2020 without good reason;

47. The panel found this allegation was not proven. As set out at paragraph 46 above, no evidence was before the panel that demonstrated there was no good reason for the visit to Costa.

Particular 1c

Whilst registered as a Social Worker between January 2020 and 6 February 2020 you provided Service User 1 with your personal mobile telephone number on 29 January 2020 without good reason;

48. The panel found this allegation proven. The panel was satisfied that Mr Moss had provided service user 1 with his personal mobile number as per the text message at page 33 of the exhibit bundle. In addition, it was of the view that Mr Moss had not demonstrated a good reason or in fact any reason at all for doing so.

Particular 1d

Whilst registered as a Social Worker between January 2020 and 6 February 2020 you made one or more inappropriate comments, or used words to the effect of, to Service User 1 as set out in Schedule 1;

49. The panel found this allegation proven. With reference to schedule 1, it was satisfied on the balance of probabilities that Mr Moss had said at least one of those things. The evidence of service user 1 was very clear and convincing. Additionally, several of the remarks in schedule 1 were repeated in the text message evidence relied upon by Social Work England.

Particular 1e

Whilst registered as a Social Worker between January 2020 and 6 February 2020 you sent Service User 1 one or more inappropriate text messages as set out in Schedule 2.

50. The panel found this allegation proven, it concluded that schedule 2 was an accurate reflection of the messages it had seen in the exhibits bundle and had heard from service user 1 that she had taken them off her own phone to support her complaint in December 2020. There did not appear to be any doubt that Mr Moss had sent the text messages. He had stated he had done so in his responses to Social Work England and said he had been aware this was a breach of professional boundaries. The panel also found that the text message exchange at page 26 of the exhibits bundle where service user 1 said “Lol get your head down nd get ur work done u have a case to close ha (laughing emojis) xx” to which he replied “I have indeed (smiley face emoji) Xx” demonstrated Mr Moss’s intention to close service user 1’s case with haste so that he could pursue an inappropriate personal relationship with her.

Particular 2

Your conduct in relation to paragraph(s) 1a, 1b, 1c, 1d and/or 1e above was sexually motivated.

51. The panel found the particulars 1a and 1b not proved and so did not consider those in this part of its deliberations. It found conduct at 1c, 1d and 1e was sexually motivated. The panel considered the evidence of service user 1 in relation to the flattery Mr Moss showered her with, the fact he had given her his personal mobile number along with the content of schedules 1 and 2.

52. Although Mr Moss denied his conduct was sexually motivated, the panel was satisfied with the overwhelming evidence that demonstrated otherwise. The panel specifically noted the message about closing the case at page 26 of the exhibits bundle. It also noted the reference to sitting in his underpants, and other messages that mentioned wanting to 'hold' service user 1, that "Wow you look absolutely gorgeous. My legs have gone funny and the butterflies are out (heart emoji) Xx" and asking her "I can't stop thinking about you. What have you done to me? (hearts in eyes emoji) Xx" as demonstrating his desire to have a personal relationship with her. This was highlighted by the exchange "I'm going to wake up any second aren't I (smiley face emoji) xx" and in response to a message from service user 1 stating "so ur ready to start dating then xx" They again made reference to the message at page 26 of the exhibits bundle and the fact that it demonstrated his desire to have an ongoing personal relationship with her once her case was closed.

53. The panel also found that the number and timing of the messages; late at night and early in the morning reinforced this finding. The panel was satisfied as per the case of Bason that both by inference and from the surrounding evidence sexual motivation was clear.

Particular 3

Whilst registered as a Social Worker between January 2020 and 6 February 2020, you failed to maintain appropriate professional boundaries with Service User 1 in that you disclosed confidential information about another Service User's case.

54. The panel did not find this allegation proven. It considered the evidence of service user 1 and preferred this to that of Ms Lancaster. Service user 1 had categorically stated that Mr Moss did not provide any details that enabled her to identify the service user referred to by Mr Moss. She had not done so. Ms Lancaster's view that a breach of confidentiality had occurred did not appear supported by the evidence as there was nothing to indicate that the information given was so specific or unique to have caused the service user to have been identified, irrespective of it being said that it was a close community.

Particular 4

During a supervision meeting with SL on 16 January 2020, you stated that you had not seen Service User 1 since 3 January 2020.

55. The panel did not find this allegation proven. Although the panel found it unlikely that Mr Moss had by the 16th of January forgotten about a meeting that took place three days earlier on the 13th, based on the evidence of Ms Lancaster they had little confidence in the record keeping at social services during the material period. As such the panel was uncertain if it can be said that Mr Moss deliberately concealed the meeting with service user 1. The panel did not know, and Ms Lancaster did not specifically remember how this question to him about this matter was formulated. In addition, there was a full record of the visits that had been undertaken by Mr Moss at page 163 of the exhibits bundle and there was no suggestion that these records were not genuine or timely. The

panel decided Social Work England, which has the burden of proof, had failed to provide any persuasive contemporaneous evidence supporting the allegation.

Particular 5

Your conduct in paragraph 4 above was dishonest in that you deliberately attempted to conceal your inappropriate contact with Service User 1 since 3 January 2020.

56. The panel did not deliberate this allegation as it had found particular 4 not proven, so it did not arise.

Finding and reasons on grounds

57. Having announced its decision on the facts, the panel then turned to consider the statutory ground of misconduct. Mr Khan made submissions and invited the panel to find that in line with the case of *Roylance v General Medical Council (No 2) 2000 1 AC 311* the conduct in question was in fact qualified by the word “professional” which links the misconduct to the profession and secondly, the misconduct was qualified by the word “serious”. He said that not all professional misconduct will qualify, as the professional misconduct must be serious and that in this case it was. Mr Khan also asked the panel to have regard to paragraphs 159, 162, 167 and 169 of Social Work England’s Impairment and Sanctions guidance.
58. The panel heard and accepted the advice of the legal adviser. The panel was reminded that the question of misconduct was a matter for its judgement and ‘that 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’ as per *Roylance*. In line with *Roylance* the panel was advised to decide for itself the professional standards it believed Mr Moss had breached.
59. The panel was unequivocal that Mr Moss’s actions as set out in allegations 1c, 1d, 1e, and 2 all of which it found proven, amounted to misconduct. It was wholly satisfied that the conduct derived from Mr Moss’s professional engagement happened professionally and was serious in nature.
60. The panel decided that Mr Moss had breached the following sections of Social Work England’s professional standards,

As a social worker I will:

1.7 Recognise and use responsibly, the power and authority I have when working with people, ensuring that my interventions are always necessary, the least intrusive, proportionate, and in people’s best interests.

2.3 Maintain professional relationships with people and ensure that they understand the role of a social worker in their lives.

2.7 Consider where conflicts of interest may arise, declare conflicts as early as possible and agree a course of action.

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

As a social worker I will not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

5.6 Use technology, social media or other forms of electronic communication unlawfully, unethically, or in a way that brings the profession into disrepute.

61. The panel noted that this was not a single incident, but that Mr Moss had engaged in a pattern of persistent sexually motivated communication lasting over a week. Additionally, Mr Moss's text messages demonstrated that he had closed service user 1's case early to pursue a personal relationship with her. Mr Moss's conduct was particularly concerning considering service user 1's multiple vulnerabilities.

62. [PRIVATE]

63. [PRIVATE]

64. [PRIVATE]

65. The panel also had regard to Ms Lancaster's witness statement in which she said she was 'angry and disappointed' by Mr Moss's conduct. It noted that in line with the case of *Nandi v GMC [2004] EWHC 2317* Mr Moss's conduct would indeed 'be regarded as deplorable by fellow practitioners'.

66. The panel took note of paragraphs 159, 162, 167 and 169 relating to sexual misconduct of Social Work England's Impairment and Sanctions guidance in its reasoning and finding of misconduct.

Finding and reasons on current impairment:

67. Mr Khan made submissions on impairment and invited the panel to find that Mr Moss's fitness to practise was currently impaired on both the personal and public elements.
68. The panel heard and accepted the advice of the legal adviser, who referenced *Cohen v GMC [2008] EWHC 581 (Admin)* and in that it should consider if the conduct is easily remediable, has already been remediated, and that it is highly unlikely to be repeated. Further, following the case of *Council for Healthcare and Regulatory Excellence v NMC and Grant [2011] EWHC 927 (Admin)* the panel was reminded to consider the following questions; a) If Mr Moss has in the past acted and/or is liable in the future to act so as to put a service user at unwarranted risk of harm; and/or b) has Mr Moss in the past and/or is he liable in the future to bring the profession into disrepute; and/or c) has he in the past breached and/or is he liable in the future to breach one of the fundamental tenets of the profession. Finally, the panel was also reminded of Social Work England's 'Impairment and sanctions guidance'.
69. The panel when considering the question of Mr Moss's current fitness to practice first considered the personal element of impairment. The panel noted that Mr Moss had admitted misconduct and that he was impaired within the social worker response bundle. He stated that he had no intention to practise social work again and wanted to voluntarily remove himself from the social work register.
70. However, the panel decided that Mr Moss's expression of personal introspection did not go far enough. Mr Moss had failed to fully acknowledge the harm he had caused service user 1 and at times he even sought to blame her for instigating his inappropriate conduct. The panel took the view that this further demonstrated Mr Moss's lack of insight into his actions, responsibilities, and the appropriate boundaries needed for social workers to practise professionally.
71. The panel decided that Mr Moss had failed to demonstrate remediation and that while he had said he had taken seven weeks, to reflect on whether he was still going to be a social worker, this was quite simply not enough given the circumstances. There was no evidence before the panel of how he had conducted this reflection.
72. The panel was satisfied that Mr Moss demonstrated continued impairment given that he maintained that his conduct had not been sexually motivated.
73. In settling the question of the public element of impairment, the panel was clear that given the circumstances and evidence available a reasonable member of the public would be horrified if there were no finding of impairment. Any such finding would totally compromise the role of Social Work England and substantially reduce the public's confidence in the social work profession. The panel concluded that the finding of impairment was necessary to uphold the public's confidence.
74. The panel decided Mr Moss was not currently fit to practise unrestricted.

Decision and reasons on sanction:

75. Mr Khan made submissions on sanction. He invited the panel to find that the only appropriate sanction was a removal order. Mr Khan asked the panel to have particular regard to paragraphs 136, 137, 149, 159, 161, 162 and 169 of Social Work England's Impairment and sanctions guidance when coming to its decision.
76. The panel accepted the advice of the legal adviser who reminded it that the purpose of a sanction was not to punish Mr Moss but to protect the public and the wider public interest. The panel were reminded of the sanctions available and of the need to consider any aggravating and mitigating factors it sees fit. The panel was also asked to ensure that when considering sanctions it should begin with the lowest sanction and move through all the available sanctions in ascending order of seriousness, before identifying the sanction it agrees is sufficient to protect the public, and maintain confidence in the profession and uphold professional standards. Finally, the panel's attention was drawn to the case of *Nursing and Midwifery Council v Persand (2023) EWHC 3356 (Admin)* in which the Court emphasised that when considering the proportionality of conditions, the panel should not just impose a standard set of conditions. Rather the question to be asked is if each individual condition is necessary in light of the risk assessment the panel would have to conduct.
77. The panel had regard to paragraph 81 of the Sanctions Guidance. The panel said that Mr Moss was an experienced social worker who had not previously come to the attention of Social Work England. [PRIVATE]. The panel decided that Mr Moss had shown some limited insight and remorse in that he wished for service user 1 to know he no longer wanted to work as a social worker and he regretted "any upset my response caused service user 1." Additionally, it said Mr Moss had made some early admissions of some of the facts and had engaged with the process up to the point of the hearing, which he chose not to attend.
78. The panel had regard to paragraph 82 of the Sanctions Guidance. The panel concluded that Mr Moss's conduct was not an isolated incident but was persistent and presented as a pattern of behaviour which took place for in excess of one week. Mr Moss's insight and reflection were limited because he maintained his conduct was not sexually motivated and he sought to blame service user 1 for his blurring of the professional boundaries and totally inappropriate conduct. The panel noted that Mr Moss's actions were reckless in that they were not confined to just the harm to which he had exposed service user 1, his actions had a direct effect on her children who did not receive the appropriate support to which they were entitled, because he closed the case early in order to pursue his relationship with their mother. Mr Moss's actions were compounded by his knowledge of service user 1's multiple vulnerabilities.

No action, advice or warning

79. The panel decided Mr Moss's impairment poses a current risk to public safety. In the circumstances it decided to exercise its discretion and move beyond the lower sanctions of no action, advice or a warning on this basis. It was satisfied that none of

these outcomes would be sufficient to address the risk to the public as they would not restrict Mr Moss's ability to practice. It would also send the quite the wrong message about the seriousness of this misconduct and therefore not be in the public interest.

Conditions of practice

80. The panel decided that in view of Mr Moss's very serious misconduct as outlined extensively above, there were no workable conditions that could be formulated which would be sufficient to protect service users and the wider public interest. It also took note of paragraphs 118 and 119 of the guidance which reads;

“118. Conditions of practice are less likely to be appropriate in cases of character, attitude or behavioural failings. They may also not be appropriate in cases raising wider public interest issues.

119. For example, conditions are unlikely to be appropriate in cases of (any of the following):

- sexual misconduct...”

Given Mr Moss had said he no longer wanted to work as a social worker, it would be impossible to formulate appropriate conditions of practice.

Suspension Order

81. The panel noted paragraph 137 of the guidance which says;

“Suspension may be appropriate where (all of the following):

- the concerns represent a serious breach of the professional standards
- the social worker has demonstrated some insight
- there is evidence to suggest the social worker is willing and able to resolve or remediate their failings”

82. With this as the starting point, the panel concluded that Mr Moss's conduct did not fall within paragraph 137. It noted that his conduct was a serious breach of the professional standards as set out within paragraphs 159-163 of the guidance. The panel were also mindful of the fact that Mr Moss had not remediated his conduct. Further, as he had not practised in three years and indicated he had no intention to return to the profession, there was no evidence he was 'willing and able to resolve their failings.' This made the imposition of a suspension order challenging.

Removal order

83. The panel concluded that a removal order was the most appropriate sanction. It considered paragraphs 167 -169 of the guidance and noted the vulnerability of service user 1 and the effect Mr Moss's conduct had on both her and her children. It decided

that in line with paragraph 163 a removal order would best serve to protect the public and the wider public interest. The panel decided that only a removal order would meet the need to uphold standards and maintain trust in the profession.

84. For the sake of clarity, the panel considered paragraph 150 of the guidance. It concluded that the limited medical evidence Mr Moss had presented was not enough for it to be satisfied that he has “adverse physical or mental health” issues that excluded him from the sanction of a removal order.
85. The panel took note of the case of *Bolton v Law Society* [1994] 1 WLR 512, as such it carefully considered Mr Moss’s interests but decided they were outweighed by the need to protect the public and the wider public interest. It was satisfied that the sanction imposed was necessary and proportionate to achieve this legitimate aim.

Interim order:

86. The panel next considered an application by Mr Khan for an interim suspension order to cover the appeal period before the final order becomes effective.
87. Having heard from the legal adviser, the panel decided to impose an interim order. Not do so would be wholly incompatible with its earlier findings in view of Mr Moss’s serious misconduct and current impairment. The panel referred to paragraph 207 of the impairment and sanctions guidance which highlighted that “an interim order may be necessary where the adjudicators have decided that a final order is required, which restricts or removes the ability for the social worker to practise...without an interim order, the social worker will be able to practise unrestricted until the order takes effect. This goes against our overarching objective of public protection”. The panel noted Mr Moss’s expressed intention not to return to the profession, but it concluded the interim suspension order was the most prudent way to ensure the protection of the public.
88. Accordingly, the panel concluded that an 18 month interim suspension order is necessary for the protection of the public. When the appeal period expires this interim order will come to an end unless an appeal has been filed with the High Court. If there is no appeal, the final order of removal shall take effect when the appeal period expires.

Right of appeal

89. 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.

90. 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.

91. 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.

92. 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:

93. 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

94. 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:

95. Please note that in accordance with section 29 of the National Health Service Reform and Health Care Professions Act 2002, a final decision made by Social Work England's panel of adjudicators can be referred by the Professional Standards Authority ("the PSA") to the High Court. The PSA can refer this decision to the High Court if it considers that the decision is not sufficient for the protection of the public. Further information about PSA appeals can be found on their website at:

<https://www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/decisions-about-practitioners>.