

Social worker: Gemma Tabula
Azarcon
Registration number: SW109941
Fitness to Practise
Final Hearing

Dates of hearing: 10 February 2025 to 14 February 2025

Hearing venue: Remote hearing

Hearing outcome:

Fitness to practise impaired, suspension order (12 months)

Interim order:

Interim suspension order (18 months)

Introduction and attendees:

1. This is a hearing held under Part 5 of The Social Workers Regulations 2018 (as amended) (“the regulations”).
2. Ms Azarcon did not attend and was not represented.
3. Social Work England was represented by Ms Michaels case presenter instructed by Capsticks LLP.

Adjudicators	Role
Manuela Grayson	Chair
Glenys Ozanne-Turk	Social worker adjudicator
Melissa Forbes-Murison	Lay adjudicator

Hearings team/Legal adviser	Role
Simone Ferris	Hearings officer
Robyn Watts	Hearings support officer
Helen Gower	Legal adviser

Service of notice:

4. The panel of adjudicators (hereafter “the panel”) was informed by Ms Michaels that notice of this hearing was sent to Ms Azarcon by email and by special delivery to an address she had provided (namely her registered address as it appears on the Social Work England register). Ms Michaels submitted that the notice of this hearing had been duly served.
5. The panel of adjudicators 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 10 January 2025 and addressed to Ms Azarcon at her email and postal addresses which she provided to Social Work England;
 - An extract from the Social Work England Register as of 10 January 2025 detailing Ms Azarcon’s registered address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 10 January 2025 the writer instructed an agent to send the notice of hearing and related documents by next day special delivery to Ms Azarcon at the address referred to above, and sent the same documents to the e-mail address held by Social Work England;
 - A copy of the Royal Mail Track and Trace Document indicating “signed for” delivery to Ms Azarcon’s (or nominated representative’s) address at 10.52 on 13 January 2025.

6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. Having had regard to the Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Ms Azarcon in accordance with Rules 14, 15 and 44 of Social Work England (Fitness to Practise) Rules 2019 (as amended) (the 'Rules').

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Ms Michaels on behalf of Social Work England. Ms Michaels submitted that Ms Azarcon has voluntarily absented herself. She referred the panel to documents in the service bundle and the absence of any response from Ms Azarcon to directions made by Social Work England or to follow up correspondence. The last response from Ms Azarcon was in June 2022. Ms Michaels submitted that it was unlikely that any adjournment would be likely to result in Ms Azarcon's attendance. Ms Michaels submitted that two Social Work England witnesses were due to give evidence at the hearing. She invited the panel to proceed to ensure the expeditious disposal of this hearing.
9. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2002] UKHL 5*; *General Medical Council v Adeogba [2016] EWCA Civ 162*. The panel also took into account Social Work England guidance 'Service of notices and proceeding in the absence of the social worker'.
10. The panel considered all of the information before it, together with the submissions made by Ms Michaels on behalf of Social Work England. The panel considered the content of Ms Azarcon's email dated 7 June 2022 which concluded as follows:

"Anyhow for this reason, please accept my apology in this instance and I'll accept the consequences and would like this chapter to be closed off"

The panel noted that Ms Azarcon had been sent notice of today's hearing and the panel was satisfied that she was or should be aware of today's hearing.

11. The panel concluded that Ms Azarcon had disengaged from Social Work England and chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Ms Azarcon's attendance. Having weighed the interests of Ms Azarcon in regard to her attendance at the hearing with those of Social Work England, and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Ms Azarcon's absence.

Preliminary matters:

12. Prior to closing submissions on the facts the legal adviser gave advice to the panel on its powers to amend the allegation. The amendment under consideration was to add an alternative statutory ground of lack of competence to particulars 1-5 of the allegation. The legal adviser advised that the panel has a responsibility to protect the public in accordance with the overarching objective. In accordance with this responsibility the panel may take pro-active steps to ensure that the case is properly presented. Under its case management powers the panel may make amendments to the allegation and such amendments may be made after the evidence has heard if it is fair to do so.
13. The legal adviser advised that in deciding whether or not it was appropriate to make an amendment to the allegation the panel should consider carefully whether the amendment under consideration would create any unfairness for Ms Azarcon. In making this assessment the panel should note that Ms Azarcon has not had notice of the amendment. The panel could also take into account the background, as set out within the panel's decision on whether to proceed in Ms Azarcon's absence. The panel should also consider any submissions or observations made by Social Work England.
14. On behalf of Social Work England Ms Michaels acknowledged that the panel has the discretion to make the amendment as proposed. In relation to the proposed amendment she invited the panel to consider Social Work England's observations. The panel should bear in mind that there is generally a requirement for a finding of a lack of competence that the factual findings represent a fair sample of Ms Azarcon's work. She also highlighted that Ms Azarcon has not had prior notice of an amendment to the allegation and that the proposed amendment was not minor.
15. The panel decided that it was fair and appropriate to amend the allegation to add the alternative ground of a lack of competence to particulars 1-5. The panel had in mind the requirement that the hearing must be fair for Ms Azarcon and that she has not had notice of the proposed amendment. In circumstances where Ms Azarcon has disengaged from Social Work England over an extended period of time the panel did not consider that the proposed amendment would unfairly prejudice her. Although the proposed amendment is not minor, it does not increase the seriousness of the allegation. The panel decided that it was appropriate to make the proposed amendment to ensure that the public is protected.

Allegations (as amended):

Whilst registered as a Social Worker:

1. ***Between on or around 9 April 2021 and June 2021, you failed to adequately assess the support needs of those service users set out below:***

- (i) ***Person 2***

(ii) Person 5

2. You failed to complete a Mental Capacity Assessment (MCA) or failed to complete a MCA adequately and/or in a timely manner for those service users set out below:

(i) Person 5, between on or around 9 April 2021 and June 2021

(ii) Person 6, between on or around 21 January 2021 to March 2021

3. Between May 2021 and June 2021, you failed to adequately assess and manage the risks of those service users set out below:

(i) Person 1

(ii) Person 5

4. You failed to maintain clear, accurate, legible and up to date records in relation to those service users set out in Schedule A

5. You created an inaccurate MCA in relation to Person 1, in that you created a MCA from copying and pasting a previous assessment completed on or around 11 March 2021.

6. Your conduct at paragraph 2(ii), in relation to Person 6 was dishonest in that you created a false MCA in relation to Person 6.

The matters set out in paragraphs 1-5 amount to the statutory ground of misconduct and/or lack of competence.

The matter set out in paragraph 6 amounts to the statutory ground of misconduct.

By reason of your misconduct and/or lack of competence your fitness to practise is impaired.

Schedule A

1. Person 1

(a) Recorded contradictory information within Person 1's case records following Person 1 being assaulted;

(b) Recorded the name of the person alleged to have caused harm ("PATCH") within Person 1's case record and/or details of the PATCH's medication .

2. Person 2

(a) Failed to record whether that was a visit or phone call

(b) Failed to record whether person 2 had declined a carers assessment or why this had been cancelled;

3. Person 5

- (a) Failed to record evidence in assessment criteria boxes for Person 5;***
- (b) Recorded “Yes” in relation to a chargeable service being considered when not applicable to Person 5***
- (c) Recorded Person 2 as having Lasting Power of Attorney for Person 5 when she did not.***
- (d) Failed to update health conditions for Person 5.***

Admissions:

16. There were no admissions and in line with Rule 32c(i)(a) of the Rules, the panel went on to determine the disputed facts.

Background:

17. On 23 June 2021, Social Work England received a referral from North Yorkshire County Council ('the Council') regarding Ms Azarcon.
18. Ms Azarcon had originally worked as a social care coordinator (SCC) from June 2019 until her HCPC registration was confirmed. She then commenced work as a Social Worker in the older adults team. Due to ongoing concerns about Ms Azarcon's practice, the Council initiated a developing performance plan in supervision in August 2020. This plan was reviewed a number of times.
19. **[PRIVATE]**
20. The Council provided Social Work England with a summary of their concerns relating to a number of Ms Azarcon's allocated cases. A sample of several cases were identified and case records requested from and provided by the Council.

Summary of evidence:

i) Social Work England

21. The Panel read a witness statement bundle of 52 pages and exhibits bundle of 752 pages.
22. The Panel heard oral evidence from SN, Team Manager of the Adult Social Care Team. SN was responsible for the line management of Ms Azarcon from December 2019 until Ms Azarcon's resignation.

23. The Panel heard oral evidence from BB. At the time of the allegation, she was a Service Manager at the Council and was the manager for SN.
24. The panel considered that both witnesses answered questions to the best of their ability given the limitations in their recollection of events due to the passage of time.

ii) Social Worker

25. Ms Azarcon did not provide any documents or written submissions for the Panel's consideration. There was no detailed response to the allegations, but the Panel noted the content of the Social Worker Response Bundle. Ms Azarcon indicated at an early stage that she did not intend to return to social work. In an email dated 7 June 2022 she stated:

"Reading the emails I feel really upset but feel that any responses do not have any weight on it as I no longer have access [sic] to the work emails to back up my responses. The circumstances revolving LLA clients is not as quite as it said in the report although I recognise all my shortcomings and the lacking of my skills which could have been improve in the ASYE program like my other colleague did when we started. I was the only one who they told to be on that program but was not included after a new manager came along. Anyhow for this reason, please accept my apology in this instance and I'll accept the consequences and would like this chapter to be closed off."

Finding and reasons on facts:

Particular 1

Between on or around 9 April 2021 and June 2021, you failed to adequately assess the support needs of those service users set out below:

(i) Person 2

(ii) Person 5

Person 2

26. The panel found particular 1(i) proved by the witness evidence and the documentary evidence.
27. Person 2 was known to the Council as her husband, Person 5, was also involved with the Council. Person 5 had dementia and had been referred for an Occupational Therapy assessment and for a disabled facilities grant on 21 April 2021. Person 2 was Person 5's carer. Person 2 told the duty Social Worker that the situation at home caring for Person 5 was becoming desperate on 8 April 2021 which triggered the request for a social care

needs assessment and a carer's assessment. Under the Care Act 2014 a carer is treated as being as important as the person with care needs.

28. Although initially Ms Azarcon recorded on Person 5's case notes on 15 April 2021 that Person 2 would not like a carer's assessment the position changed by 15 May 2021 when it was recorded that Person 2 would like a carer's assessment. On 27 April 2021 Ms Azarcon raised a new contact for Person 2 to turn her into a "carer" on the system. Ms Azarcon's diary entries included time allocated for Person 2's case on 10 May 2021, 18 May 2021 and 21 May 2021, but no carer's assessment was completed by Ms Azarcon and Ms Azarcon made no records under Person 2's case number. A carer's assessment was started on 5 June 2021 and cancelled at the same time with no explanation as to why it was cancelled. Ms Azarcon did include details relating to Person 2 in her case note for Person 5 dated 15 April 2021, but this was not recorded on Person 2's records and was not an adequate assessment of Person 2's support needs. The witnesses outlined the range of Council support services and signposting to information that might be available to Person 2, once her needs had been assessed.

Person 5

29. The panel found particular 1(ii) proved by the witness evidence and the documentary evidence.
30. The background of Person 5, the husband of Person 2, was that his case was opened by the Council in December 2020 for a disabled facilities grant assessment to be completed by an Occupational Therapist. There was a delay in allocating an Occupational Therapist and the family requested support.
31. The records demonstrate that Ms Azarcon started a needs assessment document on 15 April 2021 which was completed on 12 May 2021. SN carried out a case file audit for Person 5 on 5 May 2021. The file was assessed to be very poor. In her statement and her oral evidence BB outlined what would be expected in the needs assessment. It should include what support Person 5 required around hydration and nutrition, daily living, community inclusion, support and personal care, keeping safe, health, and property. The assessment should also include views from other professionals and the views of the family. The assessment carried out by Ms Azarcon focussed on Person 2 as the main carer and the impact of Person 5's needs on her caring role, whereas it should have been focused on Person 5's needs. This focus on Person 5's needs would be relevant to inform a care home of Person 5's needs and ensure an appropriate placement.

Particular 2

You failed to complete a Mental Capacity Assessment (MCA) or failed to complete a MCA adequately and/or in a timely manner for those service users set out below:

(i) Person 5, between on or around 9 April 2021 and June 2021

(ii) Person 6, between on or around 21 January 2021 to March 2021

Person 5

32. The panel found particular 2(i) proved by the witness evidence and the documentary evidence. Ms Azarcon did not complete an MCA for Person 5 in a timely manner and an earlier version of the MCA created by Ms Azarcon was inadequate to the extent that it was deleted by Ms Azarcon and she was required to resubmit the work.
33. The expectation was that an MCA should be completed within five working days. This was not a statutory requirement and this expected timescale was not always achieved in every case, but the assessment should be timely because an MCA is decision and time specific and it should precede any planned intervention, as explained by SN.
34. Ms Azarcon commenced the process of completing an MCA for Person 5 on 27 April 2021 and a final MCA document that was in an acceptable form was not submitted until 8 June 2021. This period of over one month was not timely.
35. The panel was not provided with a copy of the MCA which was reviewed by SN as part of her case audit of Person 5's file on 5 May 2021 because that document was deleted and a new MCA prepared and inputted. However, the panel accepted the evidence of that case audit that there were inadequacies in the MCA. For example, the audit recorded "*it is not clear what question is being asked and just says 'understanding the risk'. Risk of what?*" and "*no evidence entered into each of the assessment criteria boxes*".

Person 6

36. The panel found particular 2(ii) proved by the witness evidence and the documentary evidence. Ms Azarcon did not complete the MCA for Person 6 in a timely manner and her assessment was inadequate because it did not correctly acknowledge use of information from other records, and was not based on a visit or video call with Person 6. Ms Azarcon did not use a range of appropriate sources to analyse Person 6's capacity.
37. Person 6 became known to the Council in June 2018. A decision had been made for Person 6 to remain at a care home following the completion of an MCA in April 2019. A further MCA was completed in September 2019 when Person 6 moved to a different care home. A review of the MCA was due to take place in November 2020 and was overdue in January 2021. Person 6's case was allocated to Ms Azarcon on 21 January

2021 for a review of the placement at the home. As part of her review Ms Azarcon was expected to complete an MCA as it was overdue.

38. Ms Azarcon spoke with Person 6's daughter on 29 January 2021 and the case notes indicate that the daughter was happy with the care home and had been contacting Person 6 every week during lockdown. Ms Azarcon spoke to a member of the staff in the care home and to Person 6 by telephone on 5 February 2021. The case note records that Person 6, with a carer's help, stated that she was happy to remain at the care home and did not think that she needed anything else. The MCA document was opened by Ms Azarcon and finalised on 1 March 2021. This is not a timely completion of the MCA, given the expectation that it should be completed within five working days.
39. The panel reviewed the MCA completed by Ms Azarcon for Person 6. It included sections that were directly copied and pasted from notes made by Continuing Health Care (CHC) and sections which were based on those notes. Ms Azarcon did not reference the source of this information. The notes made by CHC were potentially relevant and could have formed part of the assessment, but if Ms Azarcon chose to use them, she should have identified the source of the information and whether it was still current.
40. Ms Azarcon's MCA was also inadequate because she did not carry out sufficient enquiries to form a rounded view of Person 6's capacity. She did not arrange to see Person 6 either in person or by video link, and record her attempted conversations with Person 6. She did not liaise with other professionals such as the Speech and Language Therapist.
41. Given the context and background, including that Person 6 had been deprived of her liberty, the likely outcome of the MCA assessment would be that Person 6 lacked capacity. Nevertheless, Ms Azarcon should have conducted an MCA assessment that was time and decision specific, and evidenced by her own enquiries.

Particular 3

Between May 2021 and June 2021, you failed to adequately assess and manage the risks of those service users set out below:

- (i) **Person 1**
- (ii) **Person 5**

Person 1

42. The panel found particular 3(i) proved by the witness evidence and the documentary evidence.
43. Person 1 had been placed into residential care due to dementia. Following a safeguarding referral on 11 May 2021, after Person 1 had been assaulted by another resident at the care home, Ms Azarcon was allocated Person 1. This was a relatively low

risk referral and SN considered that it was appropriate to allocate this case to Ms Azarcon.

44. On 12 May 2021 at 12.30, SN sent an email to Ms Azarcon allocating the referral and asking her to carry out a call to the care home to check that steps had been taken “*to minimise risk today please and the info gathering can be done next week*”. Ms Azarcon replied at 16.46 the same day stating that she would contact the home tomorrow, and that she was unable to access the database to read the allocation note. SN responded stating that she would make the call herself, given the duty to make safe in 24 hours and that Ms Azarcon would not need to read the information to check that Person 1 was safe.
45. The failure to make the call as directed by SN was a failure to assess and manage risks for Person 1. The check required was a simple one of a call to the care home to ensure that Person 1 was safe.
46. The recommended timescale for information gathering for a safeguarding concern is five working days. Ms Azarcon did not complete the information gathering within five days and was prompted by SN to progress the referral. The information gathering document completed by Ms Azarcon lacked detail about protective factors or the steps taken by the care home to keep Person 1 safe. Ms Azarcon did not contact the case manager of the care home resident who had assaulted Person 1 (the Person alleged to have caused harm, “PATCH”), or the allocated SCC for Person 1, despite being told to do so. Therefore, Ms Azarcon did not adequately assess and manage the risks for Person 1.

Person 5

47. The panel found particular 3(ii) proved by the witness evidence and the documentary evidence. Ms Azarcon was allocated the case on 9 April 2021 and visited on the 14 April 2021 after which she should have had sufficient information to complete the documentation. A risk assessment document was created on Person 5's file on 28 April 2021 but not completed until 8 May 2021, which was not timely. The relevant information was within the document but was not structured in the correct order. The assessment identified the risks, but there was no analysis, rationale, or description of steps to mitigate the risks. Ms Azarcon was offered support from the Senior Social Worker but she did not seek this out.

Particular 4

- 1. You failed to maintain clear, accurate, legible and up to date records in relation to those service users set out in Schedule A**

48. The panel found particular 4 proved (with the exception of Schedule A1(a)) by the witness evidence and the documentary evidence. Having reviewed the entirety of those elements of Schedule 1 which were found proved, the panel found that Ms Azarcon had failed to maintain clear and accurate records.

Schedule A

1. Person 1

(a) Recorded contradictory information within Person 1's case records following Person 1 being assaulted;

(b) Recorded the name of the PATCH within Person 1's case record and details of the PATCH's medication.

49. The panel did not find Schedule A1(a) proved. Although there was contradictory information within Person 1's case records, the panel considered that the explanation for these contradictions was Person 1's health condition of dementia, and that this was sufficiently clear when the case records were read as a whole. Ms Azarcon had recorded statements made by Person 1 that were not correct, for example Person 1 stating that she felt safe as she had not seen the PATCH in a few days. Ms Azarcon had recorded in the same document that a member of staff pointed out that Person 1 was sitting opposite the PATCH. The statement made by Person 1 was not correct, and this would be apparent to anyone reading the notes.
50. Ms Azarcon recorded the name of the PATCH within Person 1's case record and details of the PATCH's medication. The case records were inaccurate because this confidential information should have been recorded in the record for the PATCH and not in Person 1's case record.

2. Person 2

(a) Failed to record whether that was a visit or phone call;

(b) Failed to record whether person 2 had declined a carers assessment or why this had been cancelled.

51. Ms Azarcon did not complete case records for Person 2 and therefore failed to make any records as set out in Schedule A(2)(a) and (b). There was no record to explain any steps taken by Ms Azarcon in relation to the Council's responsibilities under the Care Act in respect of Person 2. If Person 2 had declined a carer's assessment this should have been recorded in the records for Person 2.

3. Person 5

(a) Failed to record evidence in assessment criteria boxes for Person 5;

(b) Recorded yes in relation to chargeable service being considered when not applicable to Person 5

(c) Recorded Person 2 as having LPA for Person 5 when she did not.

(d) Failed to update health conditions for Person 5;

52. The audit completed by SN on 5 May 2021 identified in relation to the MCA for Person 5 a concern that *“the evidence boxes are not completed, however a risk assessment has been opened up saying ‘yes’ to the two stage test being completed”*.
53. The needs assessment recorded that chargeable services were being considered. This was not applicable because Person 5 had private care in place and this was continuing.
54. There was inconsistency in the needs assessment form about the legal power of attorney (LPA). At one point the assessment talks about no one having the LPA, another time it talks about the wife having this, and at another point it talks about the 4 children having this. Person 5’s wife did not have the LPA.
55. An audit carried out by SN on 5 May 2021 highlighted that the assessment *“mentions Alzheimer’s and hearing impairment but these are not captured in health conditions.”* Ms Azarcon was instructed to take corrective action.

Particular 5

You created an inaccurate MCA in relation to Person 1, in that you created a MCA from copying and pasting a previous assessment completed on or around 11 March 2021.

56. The panel found particular 5 proved by the witness evidence and the documentary evidence.
57. SN explained in her evidence that it was permissible for social workers to utilise material from previous assessments or records within their own assessments if such assessments provided relevant background and the social worker should reference the source of the information and whether it was still current.
58. Ms Azarcon prepared a draft MCA for Person 1. Allegation 5 relates to this draft MCA which Ms Azarcon did not finalise. The draft MCA remained on the system as part of Person 1’s record, and was not deleted. This was in accordance with the practice in place at the Council at that time.
59. The draft MCA Ms Azarcon had produced for Person 1 included sections which were copied from a previous assessment completed on 11 March 2021. The previous

assessment had addressed Person 1's capacity with regard to accommodation needs rather than the safeguarding concern. The date on Ms Azarcon's draft MCA was 11 March 2021. This was incorrect because Ms Azarcon was not allocated the case until 11 May 2021.

60. The panel was satisfied that that Ms Azarcon created an MCA that was inaccurate, in that it was incorrectly dated, it did not acknowledge the source of its contents, and it was not decision specific in that it contained information relating to Person 1's accommodation needs and also in relation to the safeguarding concern. This was a draft MCA that was never finalised. It remained on Person 1's file because it was the Council's practice that such drafts should not be deleted. Ms Azarcon subsequently prepared a different MCA for Person 1 which did not include sections copied from the 11 March 2021 assessment and which is not the subject of the allegation.

Particular 6

2. Your conduct at paragraph 2(ii), in relation to Person 6 was dishonest in that you created a false MCA in relation to Person 6.

61. The panel found particular 6 not proved.
62. The test for dishonesty is as set out in the case of *Ivey v Genting casinos (UK)LTD [2017] UKSC 67* para 74 which states:

3. "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest"

63. The test has two elements:
- i. First the actual knowledge or belief of the social worker at the time must be ascertained

- ii. Secondly it must be determined whether their conduct was dishonest by applying the objective standards of ordinary decent people

- 64. Social Work England invited the panel to infer that Ms Azarcon copied from the CHC meeting (9 February 2021), not attended by Ms Azarcon, in order to avoid detection of the fact that she had not carried out a visit to the care home or carried out the MCA as required for Person 6. Ms Azarcon has not directly addressed dishonesty in her response. SN told the panel that the issue of Ms Azarcon copying from the CHC notes into the MCA for Person 6 was only identified by a colleague who reviewed the case when information was requested by Social Work England. This was after Ms Azarcon had left the Council. There is therefore no evidence as to what Ms Azarcon said about what she knew or believed.
- 65. In their oral evidence, the concerns of SN and BB were the deficiencies in the MCA for Person 6, rather than a concern that Ms Azarcon had deliberately created a misleading document. SN's recollection of the case of Person 6 was limited.
- 66. The panel noted that Ms Azarcon had spoken to Person 6 by telephone on 5 February 2021. The note made in the case record does not include information relating to questioning Person 6's capacity. There are no other records of a visit for Ms Azarcon to assess Person 6's capacity.
- 67. The MCA created by Ms Azarcon did not include information which was untrue, and to that extent it was not false. Nevertheless, the panel was satisfied that the MCA created by Ms Azarcon was false to the extent that it gave an incorrect impression that the entire enquiry and assessment had been conducted by Ms Azarcon.
- 68. The panel next considered Ms Azarcon's state of mind. There was evidence before the panel in the evidence of SN and BB that Ms Azarcon's skills as a social worker were limited, and that there was a lack of improvement despite support being provided. The referral to Social Work England was made due to concerns that Ms Azarcon was not following guidance or completing actions. Ms Azarcon was also described as not being able to prioritise and had a lack of clarity and poor recording of her rationale for decision making.
- 69. On the evidence submitted by Social Work England the panel was not satisfied that Ms Azarcon knew and understood the limitations and expectations of the Council regarding use of material from other assessments within an MCA. Ms Azarcon had previously used material from other assessments within a draft MCA (Person 5). The panel also took into account the background circumstances at the time Ms Azarcon completed the MCA. She was under time pressure to complete a document which was overdue and she was working under stress due to her managers' concerns about her capabilities as a social worker.

70. Although Ms Azarcon knew that she had copied information from the notes of the CHC meeting into her MCA for Person 6, the panel found insufficient evidence to draw an inference that Ms Azarcon copied the notes in order to avoid detection of the fact that she had not carried out the MCA for Person 6 as required. There was another explanation for Ms Azarcon's conduct, which was that she lacked an understanding of the requirement to identify and reference any material which was not her own, and she used previous records to enable her to complete the MCA quickly, without thinking about whether it might mislead the reader.
71. Having reached its conclusions about Ms Azarcon's state of mind, the panel decided that her conduct was not dishonest by the objective standards of ordinary decent people.

Finding and reasons on grounds:

72. Ms Michaels submitted that the facts found proved 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. In the alternative Ms Michaels submitted that the panel might conclude that the facts found proved amounted to the statutory ground of lack of competence.
73. The panel accepted the advice of the legal adviser. 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*".
74. 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*).
75. The alternative statutory ground of a lack of competence involves a standard of work that is unacceptably low and will (save in exceptional cases) be demonstrated by reference to a fair sample of the social worker's work. The standard of work expected is that reasonably to be expected of a newly qualified social worker (*Holton v General Medical Council* [2006] EWHC 2960).
76. The panel considered that the context and background circumstances were relevant to its decision on the statutory grounds. Ms Azarcon received a significant level of support from her managers which included:
- Support from the Senior Social Worker;
 - Access to opportunities for shadowing and being shadowed;
 - Training opportunities and the practice library on the Council intranet;
 - Supervision every two weeks;

- Limited case load without the allocation of complex cases;
 - Developing performance plan.
77. The level of support was at least the level of support that would be provided to a social worker completing an assessed and supported year in employment (ASYE).
 78. The panel was provided with extensive supervision notes. In a supervision meeting on 27 June 2020 Ms Azarcon stated that she felt that “*she does not have enough knowledge*”. The same supervision notes also record that Ms Azarcon misinterpreted a legal term “unbefriended” under the Mental Capacity Act. There are recorded concerns about Ms Azarcon’s level of skill in comparison to her peers. There were discussions about the need for improvement in Ms Azarcon’s organisation of her cases and timeframes.
 79. There was evidence before the panel that Ms Azarcon carried out work that was unnecessary or inappropriate. This included drafting best interest decision checklists when it was inappropriate or unnecessary to do so, and preparing lengthy case records when the information should have been recorded elsewhere. Ms Azarcon was asking the same question multiple times to different members of the team.
 80. SN stated in her witness statement that the referral to Social Work England was made because Ms Azarcon was not able to perform the role of a social worker and not able to reflect on her learning or development. This was consistent with SN and BB’s oral evidence to the panel.
 81. The panel considered whether the facts found proved represented a “fair sample” of Ms Azarcon’s work. The panel was satisfied that the sample of cases was fair. Although it involved a relatively small number of cases, Ms Azarcon’s caseload was low, and the factual findings involved Ms Azarcon’s work on the cases over a period of time between January and June 2021. There was nothing to suggest that the cases had been unfairly selected. Ms Azarcon’s level of performance in the selected cases was consistent with other evidence in the case, such as the supervision records and the developing performance plan.
 82. The panel was of the view that the particulars found proved by the panel amounted to a breach of Social Work England’s Professional Standards (Standard 1.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.8, 3.9, 3.11, 3.12, and 5.2). Given Ms Azarcon’s lack of knowledge, skills, and ability, the panel considered that her level of culpability was at the lower end of the scale. Each of the particulars found proved involved a potential risk of harm to service users, but within her employment by the Council those risks were mitigated because Ms Azarcon’s work was subject to detailed monitoring and oversight by her managers, who lacked confidence in her abilities. The panel decided that none of the particulars found proved, considered individually, amounted to the statutory ground of misconduct.
 83. When considered in context, the panel considered that the particulars found proved were more appropriately characterised as a lack of competence. There was a pattern of

conduct, underlying which was a lack of capability. Ms Azarcon's standard of work was unacceptably low even for a newly qualified social worker given that at the time under scrutiny she had been in post for over a year.

84. The panel therefore concluded that the facts found proved amounted to the statutory ground of lack of competence, and did not amount the statutory ground of misconduct.

Finding and reasons on current impairment:

85. Ms Michaels submitted that Ms Azarcon's fitness to practise is currently impaired. She submitted that there is no evidence of any remedial steps taken by Ms Azarcon, there is a high risk of repetition, and a finding of impairment is required to protect service users. She also submitted that a finding of current impairment is required to maintain public confidence in the profession and to uphold standards for members of the profession.
86. The panel accepted the advice of the Legal Adviser. It assessed Ms Azarcon's fitness to practise at today's date, having regard to the need to protect the public which includes the wider public interest.
87. When considering the question of impairment, the panel took into account Social Work England's 'Impairment and sanctions guidance'.
88. The panel considered whether Ms Azarcon's lack of competence is remediable. The competence concerns in this case are wide-ranging and persistent, but the panel was of the view that potentially remedial steps might be taken to address the lack of competence through reflection, targeted training, and skills development. Although the lack of competence is potentially remediable, Ms Azarcon has not presented the panel with any evidence of remediation, reflection, or insight. She has expressed remorse, but this did not reassure the panel that there would be no repetition of similar concerns. The limited information available to the panel is that Ms Azarcon has previously expressed her intention not to return to social work, and that she wishes this matter to be closed.
89. In the absence of evidence of remediation or insight, the panel decided that the risk of repetition is high, and consequently there is an ongoing risk of harm to service users. A finding of current impairment is therefore required to protect the public.
90. The panel also considered the need to uphold public confidence in the profession and to uphold and maintain standards for members of the profession. The findings in particulars 1-5 involve basic skills for social workers in assessing support needs of vulnerable service users, assessing and managing risks, maintaining clear and accurate records, and completing mental capacity assessments. The service users involved in particulars 1-5 were vulnerable. Persons 1, 5 and 6 had care needs due to dementia, and Person 2 was experiencing strain due to her caring role. If similar conduct were to be repeated there is a risk of harm to vulnerable service users. Given these findings and the ongoing risk of harm to service users, an informed member of the public would expect Ms Azarcon failings to be marked by way of a finding of impairment in the public

interest. A finding of current impairment is therefore required to uphold and maintain public confidence in the profession.

91. The panel therefore concluded that Ms Azarcon's fitness to practise is impaired, having regard to the need to protect the public and the wider public interest.

Decision and reasons on sanction:

92. The panel heard submissions from Ms Michaels on sanction. Her submissions included reference to aggravating and mitigating features and to Social Work England's 'Impairment and sanctions guidance' (the 'Guidance'). She invited the panel to impose a suspension order.
93. The panel accepted the advice of the legal adviser. She reminded the panel that the purpose of a sanction is not to punish Ms Azarcon, but to protect the public and the wider public interest. She advised that the panel should take into account the Guidance. She advised the panel to consider each available sanction in ascending order of severity and to apply the principle of proportionality, carefully balancing Ms Azarcon's interests and the public interest.
94. When considering the question of sanction, the panel took the Guidance into account.
95. The panel identified the following mitigating features:
- Ms Azarcon's health and personal circumstances;
 - Challenging working conditions due to the COVID pandemic.
96. The panel identified the following aggravating features:
- No evidence of insight or remediation;
 - Potential risk of harm to vulnerable service users.

No action, advice or warning

97. The panel considered that there were no exceptional reasons to merit taking no action. The option of giving advice to Ms Azarcon or imposing a warning would not be sufficient to protect the public because these options do not restrict practice and are not appropriate where there is a risk of repetition and an ongoing risk to the public.

Conditions of practice

98. The panel considered the Guidance at paragraph 114:

"Conditions of practice may be appropriate in cases where (all of the following):

- *the social worker has demonstrated insight*
- *the failure or deficiency in practice is capable of being remedied*
- *appropriate, proportionate, and workable conditions can be put in place*
- *decision makers are confident that the social worker can and will comply with the conditions*
- *the social worker does not pose a risk of harm to the public by being in restricted practice”*

99. These criteria did not apply because Ms Azarcon has not demonstrated insight. Ms Azarcon has disengaged from Social Work England and the panel had insufficient confidence that she can and will comply with conditions of practice. In these circumstances the panel was unable to formulate realistic and workable conditions that would be sufficient to protect the public.

Suspension

100. The panel considered the option of a suspension order as proposed by Social Work England. The guidance states that a suspension order is appropriate where the decision makers cannot formulate workable conditions to protect the public or the wider public interest and removal is not an option. In this case the panel was unable to formulate workable conditions to protect the public, and the option of a removal order was not available. A suspension order was the least restrictive sanction that was sufficient to protect the public. The Committee considered that a suspension order was proportionate, given that Ms Azarcon has disengaged from Social Work England and has not presented any evidence for the panel’s consideration.
101. The panel considered that a suspension order was sufficient to maintain public confidence in the profession and uphold standards for members of the profession. It is a serious sanction and the most restrictive option available to the panel.
102. The panel considered the potential consequences and impact if it were to impose a suspension order on Ms Azarcon. The panel has no information about Ms Azarcon’s current circumstances, but it acknowledged that the imposition of a suspension order may have a negative impact on Ms Azarcon. The Committee decided that Ms Azarcon’s interests were outweighed by the need to protect the public and the wider public interest.
103. The panel next considered the length of the suspension order. It reminded itself that the purpose of the proceedings is not to punish Ms Azarcon. It took into account Ms Azarcon’s position as set out in the Social Worker’s bundle. As explained in paragraph 120 of the guidance the order should be long enough for Ms Azarcon to complete any necessary remediation. The panel also had in mind that the risk of deskilling is a public

interest consideration as explained in the Guidance. The limited information available to the panel indicated that Ms Azarcon may not have worked as a social worker for several years, and therefore she may have become deskilled to some extent. Having considered all the circumstances, the panel decided that a one-year order was appropriate and proportionate. This would allow sufficient time for Ms Azarcon to reflect on the panel's decision and prepare evidence for a reviewing panel.

104. This panel cannot bind a future panel. However, a future reviewing panel would expect Ms Azarcon to attend the review hearing and it would be of assistance to that panel if she was able to provide evidence that she had undertaken significant steps that would facilitate a safe and effective return to the register without restriction. This may include:
- A reflective piece focussed on the seriousness of the panel's findings and including:
 - the potential impact on service users;
 - public confidence in the profession;
 - Social Work England's professional standards;
 - reflection and/or learning from any training relevant to the panel's findings.
 - Evidence of completion of training relevant to the panel's findings.
 - Evidence of work related skills (from paid or unpaid work).
 - References/testimonials from current employment/voluntary work.

Interim order:

105. In light of its findings on sanction, the panel next considered an application by Ms Michaels for an interim suspension order to cover the appeal period before the final order becomes effective.
106. The panel considered whether to impose an interim order. It was mindful of its earlier findings and decided that it would be wholly incompatible with those earlier findings if there was no restriction on Ms Azarcon's practice. There is a current and ongoing risk of harm to service users.
107. Accordingly, the panel concluded that an interim suspension order is necessary for the protection of the public. When the appeal period expires this interim order will come to an end unless an appeal has been filed with the High Court. If there is no appeal, the final order of suspension shall take effect when the appeal period expires.

Right of appeal:

108. 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.
109. 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.
110. 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.
111. 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:

112. 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
113. 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:

114. 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>.