Neutral Citation Number: [2023] EWHC 2125 (Admin)

Case No: CO/4692/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/08/2023

Before :

THE HONOURABLE MRS JUSTICE FARBEY

- -

Between :

Professional Standards Authority for Health and Social Care	**Appellant**
- and -	
(1) Social Work England	
(2) MDR	**Respondents**

- -
- -

Fiona Paterson KC (instructed by **Browne Jacobson**) for the **Appellant**
Peter Mant (instructed by **Bates Wells**) for the **First Respondent**
The Second Respondent appeared in person

Hearing date: 17 May 2023

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Approved Judgment

This judgment was handed down remotely at 2:00 pm on 18 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

REPORTING RESTRICTIONS APPLY

MRS JUSTICE FARBEY:

Introduction

1. This appeal concerns a decision taken on 5 October 2022 by a Panel of Adjudicators ("the Panel") of Social Work England ("SWE"). The Panel's decision followed a hearing over 8 days between 26 September and 5 October 2022. The Panel decided that (i) the fitness to practise of the second respondent (a social worker) was impaired by reason of misconduct and (ii) a five-year warning should be imposed as a sanction. In the interests of the privacy rights of her children, I made an Order on 16 May 2023 that the second respondent shall be known only as "MDR".

2. By notice of appeal issued on 13 December 2022, the Professional Standards Authority for Health and Social Care ("PSA") referred the Panel's decision to the High Court under section 29(4) of the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act"). PSA raises a number of grounds of appeal. The key challenge is to the scope of the Panel's findings about MDR's impaired fitness to practise. The Panel concluded that a finding of impaired fitness to practise was necessary (i) to promote and maintain public confidence in the social work profession and (ii) to promote and maintain proper professional standards (see section 37(2)(b) and (c) of the Children and Social Work Act 2017 ("the 2017 Act")). However, it concluded that a finding of impairment was not necessary to protect, promote and maintain the health, safety and wellbeing of the public (see section 37(2)(a) of the 2017 Act). PSA contends that the Panel's failure to find that fitness to practise was impaired on this third ground was wrong and irrational. PSA submits that, had the Panel made such an additional finding, the Panel would have imposed a suspension from Practice rather than a warning. PSA submits further that the Panel's decision contains inconsistencies and illogicality in its reasoning, leading to flaws in its conclusion on sanction which require this court's intervention.

3. By letter dated 17 February 2023, SWE conceded the appeal. MDR resists the appeal on a number of grounds. I heard submissions from Ms Fiona Paterson KC on behalf of PSA and from Mr Peter Mant on behalf of SWE. MDR appeared in person. She had in advance of the hearing provided written submissions (on 2 May 2023 and twice on 16 May 2023) together with two further statements from her daughter (a witness statement dated 29 March 2023 and an "Impact Statement"). MDR supplemented her written submissions with oral submissions. She was accompanied by her daughter for moral support: her daughter took no part in the hearing.

4. The hearing overran its allocated time in court because MDR had experienced delay in getting to the Royal Courts of Justice from outside London and Ms Paterson then took time to speak to her. Owing to the delay in the commencement of the hearing, I permitted Ms Paterson to make her submissions in reply to Mr Mant in writing. He submitted a rejoinder to that reply. Unrelated to the delay, I permitted MDR to file certain documents after the hearing as a matter of fairness to her as a litigant in person. In the event, she filed far more documents than I had permitted or anticipated. I have – for pragmatic reasons – considered those documents. They essentially provide further background to MDR's oral submissions or support particular aspects of her submissions. I have taken them into account in reaching my conclusions.

5. At the outset of the hearing, MDR applied for an extension of time to appeal against the Panel's decision and for the court to substitute a decision of "no order". The 28-day statutory time limit for an appeal (stipulated by para 16 of Schedule 2 to the Social Workers Regulations 2018) had long expired and I was not persuaded that exceptional circumstances existed or that MDR's fair trial rights would be breached unless I extended time. I refused to do so (applying the principles recently summarised in *Stuewe v Health and Care Professions Council* [2022] EWCA Civ 1605, [2023] 4 WLR 7, paras 54-55). In responding to the appeal, MDR made submissions that challenged the Panel's findings and conclusions, so that I heard and have considered the substance of what would have been her grounds of appeal.

Factual background

6. The Panel heard and read a great deal of evidence. I have been provided with no sound reason why I should not take much of the factual background from its written decision, although I appreciate and have kept in mind that MDR is unhappy with the Panel's findings and with its comments and observations.

7. MDR qualified as a social worker in approximately 2006. From February 2019 to March 2020, she was registered with an employment agency which supplies social work personnel. She spent the majority of that period in a local authority placement but was also placed in a children's social care trust.

8. MDR is the mother of twins, Child A (a daughter whom I have mentioned above) and Child B (a son). The twins were born in August 2005. MDR separated from the father of the twins (Person A) when the children were approximately 2 ½ years old. Relations between MDR and Person A have remained acrimonious over the years. In her oral submissions, MDR told me that Person A has continually abused her emotionally and psychologically. She told me that Person A has made false allegations that she has abused the twins. He has refused to support her financially and has cut himself off from Child A. She feels that she has had no avenue of support as a single working mother subject to abuse. MDR feels that she has been victimised by SWE.

9. As a result of allegations and counter-allegations made by their parents, there is a history of social services' involvement with the twins. There is no need to set out that history in full. It suffices to note that, in January 2020, a Children and Families Assessment ("the Assessment") was completed by SP, a social worker. SP recorded (among other things) that Child A had disclosed that MDR kept telling her that it was her fault that she had lost her job and had no money.

10. The Assessment records Child B's disclosure that he had seen MDR:

> "taking lots of tablets over the sink with the tap running….[He] heard his mum say that she didn't want to be alive anymore and he begged her to stop."

Child B told SP that MDR had told him that she had no money and that she was not eating in order to enable him to eat.

11. As a result of these and other disclosures, which are narrated in more detail in the Panel's decision, a Child in Need referral was made in March 2020 but was closed in September 2020. The employment agency referred MDR to SWE after the children's social care trust expressed concerns that MDR had subjected her children to emotional abuse and neglect. The agency suspended MDR in November 2019 and terminated their relationship with her in March 2020.

12. MDR has been subject to four fitness to practise investigations since 2019. She was notified of the first investigation by letter dated 1 April 2019 and was informed of its closure by letter dated 27 September 2021. She was notified of the second investigation by letter dated 2 October 2019 and was informed of its closure by letter dated 20 December 2021. She was notified of the third investigation by letter dated 2 March 2020 and was informed of the decision to refer the matter to a final hearing on 20 September 2021. She was notified of the fourth investigation by letter on 1 April 2020 and was informed of its closure by letter on 18 June 2021.

13. On 23 June 2021, MDR was interviewed for a job at a local authority ("DCC"). By the date of that interview, she had been notified of the commencement of the first three investigations and of the closure of the fourth investigation. Following the interview, MDR worked for DCC until around the end of July 2021 when her employment was terminated for not having been open and honest during the interview. Specifically, she had failed to disclose past, current or pending fitness to practise investigations. On 3 November 2021, DCC referred her case to SWE.

The Allegations

14. MDR faced three allegations before the Panel. Under Allegation 1, it was alleged that she had subjected Child A and/or Child B to emotional abuse and/or emotional distress. Under Allegation 2, it was alleged that at the job interview with DCC she had failed to disclose that she was subject to an ongoing fitness to practise investigation and/or that she had been subject to a previous fitness to practise investigation. Allegation 3 was that her failure to disclose these investigations amounted to dishonesty. The matters outlined in each Allegation were said to amount to misconduct and MDR's fitness to practise was alleged to be impaired by reason of misconduct. The Panel treated Allegations 2 and 3 as overlapping. I propose to take the same approach in this judgment by dealing with Allegations 2 and 3 together.

The fitness to practise hearing

15. The hearing before the Panel was conducted virtually, by video link. Before the Panel, SWE relied on a statement of case dated 25 May 2022 and updated on 19 August 2022. The hearing was divided into parts: a fact-finding stage, a second stage dealing with fitness to practise and impairment, and a third stage dealing with sanction. I have been provided with transcripts of each day of the hearing which I have considered.

16. At the fact-finding stage, the Panel heard evidence on behalf of SWE from SP (the author of the Assessment), FN (a representative of the employment agency), DO (a social worker who interviewed MDR for employment at DCC) and NC (who had been an investigator for SWE and who provided details of the dates on which MDR was notified of the various fitness to practise investigations). The Panel was provided

with relevant documents relating to social services involvement with Child A and Child B. It was also provided with communications between the employment agency and MDR and communications between NC and MDR.

17. MDR gave evidence. She relied on the written and oral evidence of Child A and Child B. She provided documentary evidence including a letter from her GP, letters and records concerning Child A's mental and physical health, email correspondence between MDR and Person A, correspondence relating to her divorce from Person A, an employment reference and documents concerning her financial and accommodation concerns.

18. MDR denied that she had been abusive towards Child A or Child B, maintaining that Person A would have primed Child A to make the allegations to SP. MDR rejected SP's Assessment on the basis that SP was inadequately experienced to undertake such an assessment. As regards the DCC interview, MDR did not accept that she was asked about ongoing or previous fitness to practise investigations during her interview. She contended that she did not disclose the information because she was never asked to do so.

19. Child A denied that she had disclosed to SP that MDR had been abusive to her.

The Panel's decision: fact-finding

20. In the fact-finding sections of its decision, the Panel confirmed that it had accepted the advice of the Legal Adviser assigned to the case as to the approach it should take to a number of legal issues. Following that advice, the Panel had regard to the overarching objective of protecting the public and of maintaining public confidence in the social work profession and in proper professional standards. The burden lay on SWE to prove the allegations on the balance of probabilities.

Allegation 1

21. The Panel found that SP was appropriately experienced to have undertaken the Assessment and that Child A had made the disclosures set out in the Assessment. SP was a qualified social worker who had maintained contemporaneous notes and had no known reason to record inaccurate information. Child A had a propensity in other situations to be untruthful and MDR accepted as much. The disclosures to SP were similar to those made to other professionals. Some of the disclosures were accepted as true by MDR. The Panel was satisfied that Child A had made the disclosures detailed in the Assessment and that Child A had given dishonest evidence by denying that she had made the disclosures.

22. The Panel then critically examined whether Child A's disclosures to SP were true. It was satisfied that Child A had not been primed by her father but concluded that it could not rely on Child A's account to SP unless there was corroboration from a reliable source. On this basis, the Panel rejected some of the more serious allegations made by Child A to SP (such as that MDR had made fun of, and encouraged, Child A's self-harming). The Panel accepted that MDR had called Child A a "slag" and (on numerous occasions) a "bitch". She had told Child A to "fuck off" and that she "hated" her.

23. The Panel's decision records that MDR had accepted telling Child A that it was her fault that MDR had lost everything. MDR had also accepted that, on an occasion when Child A was staying with Person A, MDR had refused her food when she came to MDR's house before school. The Panel found that MDR had criticised Person A in front of her children and stated that he was to blame for her personal difficulties. The Panel found that this was consistent with MDR's written and oral evidence in which "she regularly sought to divert attention away from her alleged behaviour and towards her grievances against Person A."

24. The Panel recorded that MDR had taken an overdose on 4 January 2020 when the children were in her home and were aged 14. The Panel accepted Child B's account that he and Child A had gone to MDR's house. MDR was crying and somewhat drunk. Child B saw that she had tablets. He told her "you don't need to do this." He went to tell Child A what was happening and she telephoned Person A who arranged for a taxi to collect both children.

25. Having considered MDR's conduct as a whole, the Panel found:

> "76. This behaviour would be upsetting for any person to witness. However, it would be all the more emotionally distressing for someone in Child A's circumstances. At the time she was approximately 14 years of age. She had mental health problems and was self-harming; including overdoses. She was being bullied at school. To be told by her mother, a person who she should be able to trust as a protector, that she was a "*slag*" and a "*bitch*", and being told to "*fuck off*" on her birthday, would have been significantly distressing. She did the correct thing in disclosing that information to appropriate professionals. Having done so, to then be blamed by [MDR] for the fact that she had lost her job and had insufficient money and food, would have been immeasurably distressing, as would being present when her mother took an overdose after an argument between the two of them. Further, she was put in the unenviable position of having her mother often criticise her father.
>
> 77. The panel was satisfied that all of those matters inevitably caused emotional distress to Child A…Further, the panel was satisfied that the behaviour constituted emotional abuse… The panel was… satisfied that the abusive behaviour commenced no later than…August 2018…and continued until [MDR's] overdose in January 2020.
>
> 78. Whilst Child B was not the target of abuse, the panel was satisfied that he was subjected to both emotional distress by having witnessed [MDR's] behaviour in the family home, both towards his sister and when [MDR] took the overdose in January 2020…Again, the panel considered that this constituted abuse, to the extent that Child B decided to leave the family home and live with his father."

26. The Panel concluded that there were many aspects of MDR's parenting that may be admirable (such as her support for Child A in her schooling, diabetes and access to counselling). Nevertheless, there had been behaviour that was unacceptable. The Panel was satisfied that MDR had subjected both Child A and Child B to emotional abuse (relating to an ongoing state of affairs) and emotional distress (relating to specific incidents). The Panel found Allegation 1 to be proved.

Allegations 2 and 3

27. The Panel found that, at the time she was interviewed by DCC, MDR was aware of three ongoing or previous fitness to practise investigations and of the fact that one further investigation had been closed. The Panel noted that MDR contended that she was never asked at the interview about fitness to practise investigations. Having heard DO give evidence, the Panel found that he was a "compelling and persuasive" witness. In light of his evidence and all the other relevant evidence, the Panel found that MDR was asked in interview about regulatory investigations and that she gave a dishonest response. The Panel found Allegations 2 and 3 to be proved.

The Panel's decision: fitness to practise and sanction

Summary of evidence

28. The Panel went on to consider the question of fitness to practise. For this purpose, the Panel had written and oral evidence from JD who was a senior manager within the local authority where MDR was working at the time of the hearing. He confirmed that MDR had been "upfront about the SWE investigation and was forthcoming with all relevant information." He gave positive character evidence.

29. The Panel had written and oral evidence from RK who was MDR's line manager at the time of the hearing. RK stated that MDR was "very open and honest, reliable and trustworthy" and that there were no concerns about her integrity. She was a committed and child-centred social worker.

30. DO gave a written reference in which he said that MDR had a very good understanding of key safeguarding concerns in relation to her caseload as a social worker. She worked effectively within a team during the short period of her employment with DCC.

31. MDR gave evidence. She told the Panel that she had never intended any harm to the children. She had raised two children all on her own. Her daughter had long-term mental health needs. She had juggled childcare with a full time job. She accepted that she had put the social work profession into disrepute. She had always "parked [her] problems at the door" when she had gone to work.

32. MDR said that, having recognised the distress and emotional harm that she had caused to her children, she had taken remedial steps pro-actively. She had referred herself for counselling (undertaking six sessions) and for a parenting course. She had adopted a method of de-escalating arguments with Child A by taking herself "out of the equation." She had no intention of repeating what she called the "stupid" thought of taking an overdose. She explained her past behaviour as being the result of acute personal difficulties.

33. Under questioning, she said:

> "… Person A has always, always caused me no end of bother… if Person A was not causing me all of these problems, we probably would not be here today…
>
> One thing that I am a little bit upset about in these proceedings is that I do not feel, I know this is about me and my behaviour and my conduct, but I do not feel that any of the historical and current domestic violence that has been attributed from Person A towards me and my children has been taken into account here. I feel that is important because it has had a huge impact on how I have parented. As I have said, it is unacceptable that I speak to my children the way that I have, and I am not proud of that for one minute and I do understand [that] people outside in the street would have a perception that I have put my profession into disrepute, but again as I have said, without them having a full understanding of all the history in this case, I do question how they would make a decision that this has had an impact on my ability to effectively practise."

The Panel's conclusions

34. In relation to Allegation 1, the Panel concluded that MDR had breached a number of regulatory and professional standards and duties. I do not here list the sources of those standards. In short, she was found to have breached a regulatory duty to take all reasonable steps to reduce the risk of harm to service users and to refrain from doing anything which could put the health or safety of a service user at unacceptable risk. More importantly, she had breached the professional standard to make sure that her conduct justified the public's trust and confidence in her and the profession. She had breached her professional duty not to abuse anyone or behave in a way that would bring into question her suitability to work as a social worker including "outside of work."

35. The Panel held:

> "108. Further, the panel was satisfied that the misconduct was serious as [MDR] had breached a fundamental tenet of social work in relation to safeguarding vulnerable children. Instead, she was responsible for subjecting her vulnerable children to emotional abuse. She has worked in child protection and has been responsible for undertaking safeguarding assessments, whereby she has had to consider whether vulnerable children are being subjected to emotional distress and emotional abuse. At the same time, she was subjecting her own children to emotional distress and emotional abuse. Her actions fell far below the actions expected of any parent, never mind a parent with social work training and experience.
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> 109. The panel acknowledged the difficulties that would have been present in being a working, single parent, responsible for

> two teenagers, one of which has significant physical and mental health problems. Nevertheless, as an experienced social worker, [MDR] had the knowledge and understanding of the impact of her emotional abuse to the two children under her care."

36. In relation to Allegations 2 and 3, the Panel found that MDR had breached her professional duty to be open and honest. It noted that dishonesty will always be considered as serious. MDR had obtained a position with DCC, and therefore a position of trust, which she may not have obtained had the recruiters been aware that she was under investigation. Her dishonesty denied the employer the opportunity to assess the risk associated with employing her. Her extreme financial difficulty was no excuse for being dishonest for her own financial gain. The dishonesty amounted to serious misconduct.

37. The Panel turned to the question of remediation. In relation to Allegation 1, the Panel found:

> "114…[MDR's] misconduct would be difficult to remediate, as the misconduct was not in relation to her ability as a social worker but was **attitudinal and behavioural**" (emphasis added).

38. Despite finding that the misconduct was attitudinal and difficult to remediate, the Panel went on to find that MDR had demonstrated remediation:

> "115. Nevertheless, the panel considered that [MDR] had demonstrated remediation in relation to the matters found proved at paragraph 1 of the Allegation. She demonstrated remorse within her written response to the allegation and expressed remorse and shame during her oral evidence... She self-referred to her General Practitioner after her overdose and to counselling last year. She has also completed a parenting course. She commenced a child psychology course in November 2021 via a recruitment agency but was unable to complete that due to insufficient time, given her parenting and working responsibilities.
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> 116. The panel noted that Child A is currently living with [MDR] and there is no evidence that [MDR] has repeated her abusive behaviour since January 2020. The Child in Need referral was closed in September 2020 and there is no suggestion of any further social services intervention…. [MDR] has demonstrated an understanding of emotional distress and emotional abuse and her ability to identify such behaviour professionally has been corroborated by JD and RK."

39. The Panel found that, in relation to Allegation 1, MDR had:

> "**demonstrated some insight** within her written representations and her oral evidence at the facts stage, **albeit**

> **this was developing and had developed during the hearing**" (emphasis added).

40. The Panel considered that MDR had made certain admissions which demonstrated some developing insight but noted that she consistently highlighted her perception of wrongdoing by others, particularly Person A, SP and her treatment by SWE which she regarded as "disgusting." The Panel noted that MDR's abusive behaviour to her children had spanned a period of time and that there had been numerous instances of abuse which affected the emotional well-being of the children. Nevertheless, the Panel concluded that there was a low risk of repetition of the sort of behaviour that related to Allegation 1.

41. In relation to Allegations 2 and 3, the Panel stated that MDR had expressed "some remorse" while maintaining that she was never asked in interview about fitness to practise investigations. She had not adduced any evidence of having undertaken further training in relation to professional integrity and probity.

42. Despite these reservations, the Panel was satisfied that MDR had demonstrated sufficient remediation. It was clear from the evidence of JD and RK that MDR had been open and honest with them about the current fitness to practise investigation.

43. For these reasons, the Panel concluded (at para 137 of its decision) that:

> "the **dishonesty was an isolated incident** and that there was a **negligible risk of repetition**" (emphasis added).

44. In light of the low risk of repetition of the serious misconduct, both in relation to emotional abuse and in relation to dishonesty, the Panel was satisfied that a finding of current impairment was not necessary to protect, promote and maintain the health, safety and well-being of the public.

45. The Panel concluded, however, that "reasonable, well-informed, members of the public and the social work profession would be appalled by [MDR's] actions." The Panel concluded therefore that a finding of impaired fitness to practise was necessary to promote and maintain public confidence in the social work profession and to promote and maintain proper professional standards.

Sanction

46. In relation to sanction, the Panel considered the relevant SWE Sanctions Guidance dated 29 July 2022. SWE submitted that MDR was guilty of serious dishonesty and that only suspension would be a suitable sanction. MDR submitted that a suspension from practice would be extremely harsh in all the circumstances. She argued that no sanction was necessary. She emphasised her personal mitigation:

> "By suspending me, it's going to affect our livelihood, my mental health is just going to go off the Richter scale. I have been fully backed by my employers who gave evidence yesterday… I just think that if a suspension is given of one year, I'm highly unlikely to return to the profession because I've already given 19 years of my life to this job and there's never

> been any concern about my [practice]. My other argument is, if Social Work England - and I have said this before – were so concerned about me as a parent and having my child in my care for the last year and a half [why] have there been no further concerns? Why didn't you act sooner than now? Why have you left me practising for the last three years unrestricted? I just don't get it. If I'm such a risk, why haven't you acted before now?"

47. The Panel weighed the aggravating and mitigating circumstances of the misconduct. It concluded that there were "exceptional circumstances" at the time of the misconduct. The Panel did not consider that there was "strong insight" but was satisfied that there had been "strong remediation for all of the misconduct." It found that MDR's personal circumstances had been exceptionally difficult and would have been at times overwhelmingly stressful. These weighty mitigating factors were strong enough that restrictions on MDR's practise were not necessary. However, taking no action would not adequately reflect the serious nature of MDR's conduct. A warning could adequately record the Panel's disapproval of her conduct but the Panel accepted also that a suspension would send a clear message to the public and the profession.

48. The Panel noted that the dishonesty was serious. However, it considered that seriousness was a sliding scale. MDR had not been dishonest in relation to service users. Her dishonesty resulted in her obtaining a role that, putting aside the regulatory concerns, she was qualified and capable of undertaking. She had performed the role to a high standard, as confirmed by DO's written and oral evidence.

49. The Panel observed that the Sanctions Guidance did not mandate that social workers responsible for serious dishonesty must be suspended or removed from the social work register. The Guidance merely stated that this would usually be likely. The Panel accepted that the likelihood would be all the more pronounced where the dishonesty was accompanied by other findings of misconduct, such as those matters that were found proved in Allegation 1. However, the Panel was satisfied that this was "an unusual case" and one where reasonable and well-informed members of the public and social work profession would not demand that there be restrictions on MDR's practice.

50. The Panel considered that there would be no public interest in denying local authorities a competent, experienced, committed and passionate social worker. Suspending MDR would be a punitive act and would be to the detriment of her service users, employer and vulnerable daughter. The Panel was satisfied that public confidence and proper professional standards could be promoted and maintained by issuing a warning. Although the decision was marginal, the panel was satisfied that it was appropriate to give a warning which would last 5 years.

SWE's Sanctions Guidance

51. The applicable Sanctions Guidance is dated 29 July 2022. It deals expressly with dishonesty (emphasis added):

> "107. Social workers are routinely trusted with access to people's homes, and highly sensitive and confidential

> information. They are also routinely trusted to manage budgets including scarce public resources. **Any individual dishonesty is likely to threaten public confidence in the proper discharge of these responsibilities by all social workers**."
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> …
>
> 109. **Dishonesty through misrepresenting qualifications, skills and experience, for example on a CV, is also particularly serious** because it may lead to the social worker being appointed to roles and responsibilities that they cannot safely discharge. The public and employers must be able to trust the accuracy of such information provided by social workers.
>
> 110. **Evidence of professional competence cannot mitigate serious or persistent dishonesty.** Such conduct is highly damaging to public trust in social workers and is therefore **usually likely to warrant suspension or removal from the register**.

52. The Guidance makes plain (at para 68) that the impact a sanction may have on a social worker's personal circumstances may have punitive or negative consequences but this "should not usually affect the assessment of the minimum sanction necessary to protect the public."

53. A warning order is a "signal that any repetition of the behaviour that led to the concern is highly likely to result in a more severe sanction." A warning order implies a clear expression of disapproval of the social worker's conduct or performance (para 78 of the Guidance).

54. Suspension is appropriate where no workable conditions of practice can be formulated that can protect the public or the wider public interest but where the case falls short of requiring removal from the register (para 93 of the Guidance). Suspension orders can be imposed for a period of up to 3 years. A prolonged suspension may result in deskilling. Where possible, it is "in the public interest to support the return to practice of a trained and skilled social worker if this can be achieved safely. This means that the risk of deskilling is a public interest consideration" (para 94 of the Guidance).

Legal framework

55. Section 37(1) of the 2017 Act provides that the overarching objective of SWE in exercising its functions is the protection of the public. By virtue of section 37(2), the pursuit by SWE of its overarching objective involves the pursuit of the three objectives:

> "(a) to protect, promote and maintain the health, safety and well-being of the public;
>
> (b) to promote and maintain public confidence in social workers in England;

> (c) to promote and maintain proper professional standards for social workers in England."

56. The primary objective of professional regulation is not to punish for misconduct but to protect the public and the reputation of the profession in question (*Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo* [2004] EWCA Civ 1356, [2005] 1 WLR 717, para 60).

57. Both Ms Paterson and Mr Mant directed me to the familiar principles of *Bolton v Law Society* [1994] 1 W.L.R. 512, 519B-E. The court in that case laid down a number of principles including:

(i) Because orders made by a disciplinary tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of a regulatory jurisdiction than on the ordinary run of sentences imposed in criminal cases; and

(ii) The reputation of the profession is more important than the fortunes of any individual member.

For convenience, I shall call these principles the first *Bolton* principle and the second *Bolton* principle respectively.

58. A panel must consider the impact of a sanction on a social worker but the adverse effects are not decisive: even when a social worker has strong mitigation and even when the effects of suspension from practice would be irreversible, personal mitigation must be given limited weight. As held in *Bolton* (at p.519 D-E):

> "…it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right."

59. The principles in *Bolton* have been applied more widely to professionals other than solicitors. In *Anderson v Social Work England* [2020] EWHC 430 (Admin), this court applied *Bolton* and observed at para 25:

> "Social workers work with some of the most vulnerable members of society. They have to be honest, and the profession as a whole has to be seen as being honest. The profession has to have in place robust procedures to ensure that honesty is maintained."

60. The importance of honesty and integrity in applications for professional positions has been emphasised by the courts on a number of occasions. In *General Medical Council v Theodoropoulos* [2017] 1 W.L.R. 4794, Lewis J (as he then was) observed:

> "36…Honesty and integrity are also fundamental in relation to qualifications and the system of applying for medical positions.

> Thus, in *Makki's* case [referring to *Makki v General Medical Council* [2009] EWHC 3180 (Admin)], the court dealt with a registered medical practitioner who had misrepresented the extent of his experience when applying for a post in a hospital. Irwin J said, at para 44 of his judgment:
>
> > 'The degree of dishonesty here and its nature, affecting not registration but qualification and the integrity of the system of job applications, affects something which is every bit as fundamental to the proper respect for the system, to the proper operation of the system of medicine and of appointments to medical positions, as is the system of registration.'"

I would adopt these observations in the context of social workers. Dishonesty at a job interview may deny the prospective employer the information needed to assess whether there is any risk to the public (and, if so, its extent) that could arise from employing the candidate. It will harm the public interest in securing the right social workers for the right jobs.

The court's powers and approach

61. Section 29(7) of the 2002 Act provides that a referral to the High Court is to be treated as an appeal. The court's powers are provided by section 29(8). They include allowing the appeal, quashing the relevant decision and substituting for the relevant decision any other decision which could have been made by the panel. As the referral is to be treated as an appeal, the court is generally limited to a review of the Panel's decision (CPR 52.21(1)). An appeal will be allowed where the Panel's decision was wrong or alternatively unjust because of serious procedural or other regularity (CPR 52.21(3)).

62. The imposition of one sanction rather than another is an evaluative one and is multi-factorial (*Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879, para 61). Given that the Panel usually has greater expertise in the social work field than the court, an appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation; or (2) for any other reason, the evaluation was wrong, that is to say that it was an evaluative decision which fell outside the bounds of what the Panel could properly and reasonably decide (*Bawa-Garba*, para 67).

63. In deciding whether a decision is "wrong", the court will consider whether the Panel has properly performed its task so as to reach a correct decision as to the imposition of a sanction (*Ruscillo*, para 73). The court's intervention will be justified where the sanction is inadequate such that the public remains at risk (*Ruscillo*, para 61).

The parties' submissions

64. Ms Paterson advanced three grounds of appeal. Under Ground 1, she submitted that the Panel's finding that there was a low risk of repetition was unreasonable. The finding rested on two assumptions: first, that MDR's personal circumstances had changed since the relevant events; secondly, that the proved dishonesty was an

isolated incident. However, those two assumptions failed to take account of the Panel's own findings that MDR's failings were attitudinal and ongoing, even throughout the hearing.

65. Ms Paterson submitted that the Panel failed to consider its own findings that MDR, when challenged, had a tendency to prioritise her own needs over those of others and that her personal circumstances continued to be difficult. These findings implied or gave rise to the reasonable inference that the risk of repetition was still present. As a result of these errors, the Panel's decision was illogical and unsafe. Had the Panel recognised the implication of its own findings, it is probable that the Panel would have imposed a suspension order, rather than a warning.

66. Ms Paterson submitted that MDR's serious misconduct (which had not been remediated) should have led the Panel to conclude that a finding of impairment was necessary on all three limbs of section 37(2), including the protection, promotion and maintenance of the health, safety and well-being of the public under section 37(2)(a) of the 2017 Act. Had it properly directed itself under section 37(2)(a), it would probably have imposed a suspension and not a warning.

67. Under Ground 2, Ms Paterson submitted that the Legal Adviser's advice to the Panel on sanction was inadequate such that the Panel fell into error in its decision on sanction. The Legal Adviser's failure to advise the Panel on the first and second *Bolton* principles constituted a procedural irregularity which caused the Panel to fall into error. It led to a failure by the Panel properly to address the weight which should be given to any mitigating features, especially in light of their findings of emotional abuse and dishonesty. Had the Panel been properly advised, by reference to the first and second *Bolton* principles, it would have been clear that, regardless of the mitigating factors, the public's confidence in the social work profession could only be properly preserved through a suspension order. By imposing a warning order rather than a suspension order, the Panel failed to give effect to the gravamen of its own findings.

68. Under Ground 3, Ms Paterson submitted that the Panel fell into error by imposing a warning order rather than a suspension order. The warning order failed to protect the public interest contrary to section 37(2) of the 2017 Act. It failed to take account of the gravity of the factual findings against MDR and the conclusion that her actions had been "wholly unacceptable, regardless of any difficulties in her personal life" and that she only had partial insight which was still developing. It was clear from the combination of the Panel's own findings, the Sanctions Guidance and the relevant legal principles that only a disposal which restricted MDR's ability to practise would protect the public interest.

69. A fourth ground of appeal that the Panel failed to give adequate reasons for not applying the Sanctions Guidance was pursued in Ms Paterson's skeleton argument but abandoned before me. I need say no more about it.

70. On behalf of SWE, Mr Mant supported Ms Paterson's submissions on Ground 1 and broadly supported her submissions on Ground 3. On Ground 2, he submitted that there was nothing wrong or misleading in the advice given by the Legal Adviser. The Sanctions Guidance, to which panels were required to have regard, made express reference to *Bolton* and quoted the second *Bolton* principle. The first principle was

not cited in the Guidance but was well understood by professional regulatory panels: it flowed from the overarching objective to which the Legal Adviser did refer in his written advice to the Panel.

71. In her email sent to the court on 2 May 2023, MDR stated that she had no objection to the appeal but objected to SWE reconsidering sanction owing to the delay that would be caused by that course. She requested the court to take a decision about sanction. Ideally she would want the whole case looked at again. She pointed out that there had been no previous restriction on her employment in any of the other proceedings brought by SWE. If she was a risk to the public, some form of restriction would have at some stage been imposed. She claimed to have very good insight into her actions as she had admitted to some of the allegations. She said that the victim in the proceedings was her daughter as SWE had failed to take her evidence into account. She said that Person A had stopped at nothing to discredit her. She gave a detailed account of her current personal situation. She described her severe financial difficulties.

72. In a letter dated 16 May 2023 (the day before the hearing), MDR again blamed Person A for her situation. She listed over the course of nearly two pages of A4 paper the documents she wished the court to consider. She complained about delay in the SWE investigation and accused SWE of the selective use of evidence. She gave some background to Child A's mental health problems and to social services' involvement with Child A.

73. In the 16 May letter, MDR requested that the court quash SWE's decision, remove the five-year warning and make no order. She submitted:

> "I feel to now look at suspending me for 12 months or whatever timescale is absolutely ridiculous when there was an interim suspension hearing held November 2021 where NO ORDER was made, I feel very much scapegoated here and I feel the public need to know that a social work body has prejudiced me throughout these investigations just to make an example of me, but at what cost?"

74. The letter went on to say among other things:

> "… I still to this day refute the lies made about me by DO the Team Manager from [DCC] who lied on oath, never was I asked during my interview about my current, past, pending investigations into my practice, never in ANY interview have I ever been asked such a question, so for him to lie on oath is something that is unforgivable…"

75. She submitted that she had not abused her children and that she had been punished enough for what she had done. The passing of time had brought insight into her past actions and she had learned a hard lesson. Her physical health had suffered. She reiterated that she did not want to wait longer for SWE to organise another panel hearing.

76. In her second email of 16 May 2023, MDR contended that her right to a fair hearing under Article 6 of the European Convention on Human Rights had been breached because she was a litigant in person whereas the other parties have legal representation. She has therefore been "outgunned."

77. In her oral submissions, MDR submitted that suspending her from practice would lead to the loss of a skilled social worker which would not be in the public interest. She had long experience as a social worker (nearly 18 years) and there had been no previous complaints about her work. She had an unblemished employment record despite raising two children.

78. MDR submitted that the allegations against her were false. She continued to blame Person A for her predicament and told me more about Child A's mental health problems. SWE had failed to consider and deal with all the problems that she had faced and had failed to treat her as a victim. None of her problems had ever had any impact on her professional ability to look after vulnerable children and families.

79. MDR disputed that DO had asked her questions about SWE investigations in the DCC interview. She said that, since then, she had learned from her mistake and had shared the information with her subsequent employers. She felt that she was caught in a dilemma: either she could reveal the information about her regulatory position to a prospective employer which means that she would not get the job; or she could not reveal it which would also lead to problems.

80. I was directed to documentary evidence of an emergency admission to hospital in February 2023 which stated that MDR had been struggling with stress for the last three years related to financial instability "as her ex-husband reported her to her job which had led to subsequently losing her job." She referred me to the record of a Child Protection Conference, reading out a number of passages which she viewed as painting her in a good light as an open and honest parent.

Analysis and conclusions

81. I do not accept that MDR's fair trial rights under Article 6 have been breached. It is right that SWE was represented by counsel (not Mr Mant) before the Panel and that MDR represented herself. However, a person's Article 6 rights are not breached simply because he or she is a litigant in person. I have not been properly directed to any particular aspect of the procedure before the Panel that is said to have been unfair. The same applies to the hearing before me: MDR is a litigant in person but she did not point to any particular feature of the appeal that was procedurally unfair.

82. I turn to PSA's grounds of appeal. It is convenient to consider them in a different order to the way they were argued. I shall consider Grounds 1 and 3 before Ground 2.

Ground 1: risk of repetition

83. MDR's principal submission (when distilled) is that SWE should be slow to pass judgment on a person's private life when that person's professional ability and skill as a social worker have not been directly impugned. Despite the lengthy history of engagement with SWE's disciplinary processes, albeit that those processes had not previously progressed beyond the interim stage, she had had no restrictions placed on

her practice. If there had been any real evidence to doubt her professional ability, it would have manifested itself in an interim restriction on her practise before now. She relied on the passage of the Sanctions Guidance (cited above) that it is in the public interest to retain a trained and skilled social worker. Her suspension would lead to her deskilling which would be against the public interest.

84. I accept that, to some degree, a social worker may be able to rely on a division between her private and professional lives. A social worker who has a transient personal crisis may not have impaired judgment in relation to his or her professional caseload. If all that the Panel had found was that MDR had used inappropriate language or displayed undue melancholy to her children during an isolated and stressful part of her life, this appeal would be unfounded.

85. However, in my judgment, the Panel's decision cannot be characterised in this manner. The decision is broader and is objectively founded on statutory regulatory principles. In particular, there is no reason for this court to interfere with the Panel's finding of fact that MDR was dishonest in a job interview in order to obtain employment with DCC.

86. The Panel found at para 137 of its decision (cited above) that the dishonesty at interview was an isolated incident carrying a negligible risk of repetition. That finding is unsustainable in light of the Panel's other findings.

87. First, the Panel found (at paras 129-130 of its decision) that MDR would have known that Child A was seeking to mislead the Panel because MDR was aware of Child A's written evidence (which was in the form of an email dated 22 September 2022) before the hearing. It followed that MDR had:

> "made the conscious decision to rely upon Child A to give evidence before the panel, which she knew to be untruthful."

88. MDR was entitled to mount a vigorous defence to the charges against her; but her decision to call her daughter to give untruthful evidence to the Panel went significantly beyond offering an alternative account of past events and went beyond "a failed attempt to tell the story in a better light than eventually proved warranted" (*Sawati v General Medical Council* [2022] EWHC 283 (Admin), para 108). It demonstrated a lack of honesty. MDR's decision to place dishonest evidence before the Panel fatally undermines the Panel's conclusion that there was no risk of repetition of the dishonesty shown to DCC.

89. Secondly, MDR has consistently prevaricated about her dishonesty to DCC. In part of her evidence to the Panel at the fact-finding stage, she appeared to accept that she had been dishonest but to justify her dishonesty on the grounds of her poor financial situation:

> "My rationale for not being open and honest was for financial implications. It wasn't to come across as malicious or dishonest in any way. I know how that looks regarding my code of conduct as a social worker, but my ex-husband had stopped my child maintenance, so we were literally living on peanuts."

90. At a later point of her evidence, she changed her position, saying that she was not asked about regulatory investigations in the DCC interview because, if she had been asked, she would have been open and honest. At a yet further stage of her evidence, she said that upon receiving the job she did not tell DO about her regulatory history: she "wanted to be open and honest with him" but knew that she "was going to lose another job." She accepted that the only reason that she told him eventually was because he was going to find out in any event.

91. In her closing submissions to the Panel at the end of the fact-finding stage, MDR did not admit to dishonesty but sought to minimise her dishonesty by conceding only that she had not been "up front." She said: "I did this purely for survival, to be able to earn an income and to be able to provide for my children. It was not my intention to be dishonest." This position, adopted before the Panel, does not on any reading amount to an acceptance that she was wrong to be dishonest.

92. MDR gave further evidence about the DCC interview at the second stage of proceedings. Questioned in relation to Allegations 2 and 3, she said:

> "How is anybody expected to move on with their life by keep dragging up the past?...Again I do not want to come across as being deceitful or dishonest, but is it relevant when the findings on the other four matters were concluded with no further action? …I do feel that what I did was wrong, and I admit to that, **but what I do not admit to, which has been apparently found proven, is that I said no in interview when questioned**" (emphasis added).

93. MDR's failure to accept that she had been dishonest (and not simply tactical) at the interview further undermines the Panel's finding that her dishonesty was not likely to be repeated.

Ground 1 – insight into misconduct

94. The Panel accepted that MDR did not have "strong insight" but found that her insight "was developing and had continued to develop through the proceedings." In my judgment, the Panel's approach to the question of insight was wrong and irrational.

95. The Panel found at para 125 of its decision that MDR "regularly demonstrated a lack of understanding and appreciation of the gravity of the allegations…which she faced" and that (particularly in relation to Allegation 1) she regarded herself as the subject of "fabricated lies." I agree with Ms Paterson that these findings are inconsistent with a finding that MDR had any proper insight into her misconduct. In addition, the decision to call a vulnerable child to give dishonest evidence in relation to Allegation 1 should have driven the Panel to conclude that MDR had developed no proper insight into Allegation 1 as well as no proper insight into questions of honesty which was key to Allegations 2 and 3. Such a misguided approach cannot possibly have been remediated during the course of the hearing.

96. In relation to Allegations 2 and 3, MDR prevaricated and minimised her dishonesty during both stages of the proceedings before the Panel. MDR continued to prevaricate before me, saying that she had been in a dilemma as to whether to disclose

her regulatory history to DCC. While her attitude at the time of the appeal is not relevant to whether the Panel made errors, she did not advance her defence of the appeal by making submissions that demonstrated a lack of insight into the DCC interview. She continued to dispute DO's account of what she had been asked in the interview. However, there is no proper reason for this court to depart from the factual findings of the Panel, which saw and heard evidence from witnesses over the course of 8 days. It cannot reasonably be said that she developed insight during that period.

97. For these reasons, the Panel's finding in relation to insight was wrong and irrational.

Ground 1: Health, safety and well-being of the public – section 37(2)(a)

98. As I have set out above, the Panel found that MDR's misconduct was "attitudinal and behavioural". I would not accept that attitudes and behaviour can never be changed or remediated to the extent required to meet the objectives set out in section 37 of the 2017 Act. MDR had made an effort to remediate by undertaking (for example) six counselling sessions. Despite her effort, it ought to have been plain to the Panel that her attitudes could not reasonably be regarded as having changed. Her decision to rely on Child A's dishonest evidence, her prevarication about what had happened at the DCC interview and her lack of appreciation of the gravity of the allegations which she faced all pointed towards ongoing attitudinal failures giving rise to regulatory risks.

99. In light of MDR's reluctance to accept that she had been dishonest, and her lack of insight into the gravity of being untruthful at interview, the Panel could not in particular reasonably conclude that her attitude towards honesty had changed. I accept that MDR was qualified for the DCC job and performed well: as it happens, there was no harm done to any service user or member of the public arising from her dishonesty. But MDR's dishonesty plainly damaged "the proper operation of the system" of recruitment (*Theodoropoulos*, para 67, above).

100. The recruitment of social workers has at its centre the objective of keeping safe vulnerable adults and children. By being dishonest in her interview, MDR placed her own interests above the protection of the health, safety and well-being of the public contrary to the overarching objective. The Panel was wrong and irrational to conclude otherwise. The Panel could not rationally conclude that the risk to public health, safety and well-being had been remediated in circumstances where MDR did not recognise the risk and had shown no insight into her conduct.

101. I do not accept that the absence of previous interim restrictions on practice should be given weight in the present appeal. The Panel was bound to make its own findings of fact and reach its own conclusions on the basis of the evidence before it. The Panel could not be bound by the conclusions of other panels in other investigations.

102. In light of MDR's serious dishonesty, which had not been remediated, the Panel erred in concluding that a finding of impairment was not necessary on grounds of risk to the protection of the health, safety and well-being of the public in addition to the other elements of the overarching objective.

103. For these reasons, Ground 1 succeeds.

Ground 3

104. It follows that the Panel's approach to the question of sanction was founded on errors of approach in relation to questions of repetition, insight and remediation. Its flawed approach to the question of the protection, promotion and maintenance of the health, safety and well-being of the public infected its approach to whether a suspension and not a warning was the appropriate sanction. Given that the sanction decision was founded on flawed reasoning, it cannot stand.

105. In any event, the Panel's decision on sanction demonstrates further material inconsistencies in its reasoning. The Panel justified imposing a lesser sanction by reference to "unique and exceptional circumstances." However, on the Panel's own finding elsewhere in its decision, MDR's circumstances were no excuse and, in terms of the seriousness of MDR's conduct overall, the Panel accepted that dishonesty had been accompanied by other findings of misconduct which could not be justified. MDR's personal and financial circumstances could not justify a lesser sanction (*Bolton*, p.519 D-E, above). The decision to impose a warning was based on flawed and illogical reasoning which cannot be sustained. Ground 3 succeeds.

Ground 2

106. It follows that I do not need to determine whether the Legal Adviser's advice to the Panel was inadequate. I would have preferred Mr Mant's submissions in this regard. I would not accept that there was any actual misdirection by the Legal Adviser in this case; nor would I accept that any misdirection was of sufficient significance to invalidate the Panel's decision on sanction. In hindsight, it may have been preferable for the Legal Adviser to remind the Panel of the first and second *Bolton* principles but this was a specialist Panel which could be assumed to have a general appreciation of *Bolton*. In any event, the Sanctions Guidance expressly cites the second *Bolton* principle and conveys the gist of the first Bolton principle at para 68. There is no reason to suppose that the Panel did not have the correct principles in mind.

107. Ground 2 is at most a second order challenge: it is the Panel's own reasoning and decision that counts. Ms Paterson's submissions on Ground 2 would appear to stand or fall with the other Grounds and so would not have been decisive. Ground 2 added nothing of substance to the appeal.

Disposal

108. In light of my conclusions on Grounds 1 and 3, I shall quash the Panel's decision in relation to impairment as being both wrong and irrational. I accept Mr Mant's submission that a finding of irrationality in relation to impairment equates to the outcome that the Panel should have been driven to conclude that all three elements of section 37(2) were satisfied and I shall substitute a finding to that effect.

109. As to sanction, Ms Paterson submitted that I should remit the case to a differently constituted panel for disposal under section 29(8)(d) of the 2002 Act. Mr Mant submitted that the matter should be remitted to a panel to re-determine sanction or, in the alternative, the court should itself impose a one-year suspension. MDR submitted that I should reconsider the sanction myself owing to the likely delay before the Panel

would deal with the matter. The delay would be financially and emotionally onerous for her.

110. It would be tempting to say that only one reasonable conclusion may be reached in light of the Panel's unimpeachable findings that the three serious Allegations were proven: that this court should substitute its own decision and impose a one-year suspension. I have, however, decided that the better course is to remit the case to a Panel for fresh findings on sanction. I have decided to take this course because, despite her current lack of insight, it is conceivable that a Panel may properly conclude that MDR's impairment is not such as to justify the risk of deskilling a social worker who has in so many ways contributed to the public good by long professional service.

111. I have reached this conclusion on the facts of this case because of the strong professional references from various different sources that were before the Panel. I make it clear however that MDR should not minimise the hurdles that she must surmount to persuade the Panel not to suspend her. Mr Mant told me that, although the assumption of a pastoral or welfare role is not part of its statutory function, SWE can signpost its registrants to support services and give some assistance in accessing support services. SWE made efforts to engage MDR in signposting, but she refused support. She would do well to take up any offers of support and to continue with the efforts that she had begun to make at remediation at the time of the hearing before the Panel.

112. The twins have reached adulthood and are thus able to live independent lives. I understand that they are both in employment. MDR should have more time to reflect on her own life and would be well advised to avoid any impression that she is dragging Child A into her regulatory problems as a decoy to remove the light from her own conduct. I appreciate that MDR would like a speedy resolution, but she must not minimise the complexity of her case.

Conclusion

113. For these reasons and to this extent, this appeal is allowed. The parties should co-operate with each other so as to file the draft terms of an Order for my approval, failing which the matter will be listed before me. I note that SWE accepts liability for PSA's reasonable and proportionate costs of and occasioned by the appeal up to 17 March 2023 (being 28 days after its formal conceding of the appeal).