Sheriffdom of Tayside Central and Fife at Dundee

Judgment of Sheriff George Way

in causa

BE

against

The Scottish Social Services Council, Defender

DUN-B145-20

Dundee, 30th November 2021

The Sheriff having resumed consideration of the cause; sustains the Defenders pleas in law; repels the pursuers pleas in law and dismisses the appeal with no expenses due to or by either party.

Sheriff

NOTE

Introduction

1. By this Summary Application, the Pursuer appeals against the finding of a Fitness to Practise Panel (hereinafter "the Panel") formed by the Scottish Social Services Council (the SSSC) that the Pursuer was unfit to practice and to make a removal order from their register.

Background and elements of the essential legislative structure

2. The pursuer was, for reasons that will be examined later in this judgment, not legally represented at the hearing. The consequence of that at this stage, is that there were no joint minutes of admission or any real engagement between the parties that might have

narrowed the issues in dispute. In particular as will become clearer, the pursuer seems to have had no focus on what the relevant legislation that we will look at in more detail later, required of the defenders when exercising their functions nor the role of this court.

3. To provide some of that context, before we examine the pursuer's case I propose to examine elements of the relevant statutory and procedural provisions. The Defender was established under the Regulation of Care (Scotland) Act 2001 ("the Act"). The Act imposes a duty upon the Defender to promote high standards of conduct and practice among social service workers. The Act defines a social service worker, among others, as "*a person employed in the provision of…a care service*". There is no doubt that the Pursuer was a social worker.

4. The Defender is obliged to maintain a register ("the register") of those employed to provide a care service. Those seeking inclusion on it must apply to the Defender in accordance with rules that may be created and revised.

5. The Act obliges the Defender to prepare and publish Codes laying down standards of conduct and practice expected of social service workers, to which such workers and their employers must have regard. Employers must take any Code into account when making any decision about the conduct of a worker. In November 2016, the Defender published a Code of Practice for Social Service Workers ("the Code"). With effect from 1 October 2001, under powers conferred by the Act, the Scottish Ministers promulgated the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001 ("the Regulations"). The Regulations *inter alia* permit the Defender to appoint committees and such committees to appoint sub-committees.

6. The Act also obliges the Defender to promulgate rules with the consent of the Scottish Ministers to determine the circumstances and the means by which the name of a person may be removed from the register.

7. In 2016, the Defender promulgated Fitness to Practise Rules 2016 which it later amended by Fitness to Practise (Amendment) Rules 2017. The 2016 Rules as amended are referred to by the Defender as The Combined Fitness to Practise Rules 2017 ("the Rules").

8. The Rules permit the Defender to form a Panel to decide *inter alia* whether a registered worker's fitness to practise is impaired and, if so, any sanction to be imposed. The Panel is a sub-committee of the Defender's Fitness to Practise Committee. When the Defender receives an allegation about a registered worker which it considers, if proved, would be likely to result in a finding that the worker's fitness to practise would be impaired, it may enquire into the allegation and if deemed appropriate, investigate it. If an investigation is commenced the defenders must inform the worker and any employer. During an investigation, the Defender may, with the worker's consent, impose a Temporary Suspension Order. Following any investigation, if the Defender considers there is a real prospect of a finding of impairment and consequent sanction of the worker, it may refer determination of the allegation to a Panel.

9. In that event, the Defender is obliged to inform the worker and any employer of the allegation and referral and give reasons why it considers the worker's fitness to practise has been impaired. The Defender must send the evidence on which it intends to rely to the worker. This procedure was invoked in relation to issues raised as to the pursuers fitness to practice and as well will see, hearings were heard and ultimately, the decision was taken to remove her from the register.

10. The Pursuer then lodged the present Summary Application under s.51 of the Act, by which she seeks to appeal against the Panel's decision. s.51 provides:-

Appeal against decision of Council

(1) A person given notice under section 50(2) of this Act of a decision to implement a proposal may, within fourteen days after that notice is given, appeal to the sheriff against the decision.

(2) On such an appeal the sheriff may—

(a) confirm the decision; or

(b) direct that it shall not have effect.

(3) The sheriff shall also have power, on such an appeal—

(a) to vary any condition which, by virtue of section 46 of this Act, is in force in respect of the person;

(b) to direct that any such condition shall cease to have effect; or

(c) to direct that a condition which the sheriff thinks fit to impose shall have effect in respect of the person.

The Appeal Process

11. This appeal was presented to me in the form of a debate based upon the voluminous papers lodged, that included verbatim transcripts of every witness heard and the documents out to them or otherwise considered by the Panel. At the heart of this appeal is the defenders belief that the whole process, commencing with the earlier disciplinary process by her former employers from which the process before the defenders emerged was motivated by animus against her. Indeed she categorised the whole process as little more than a "witchhunt". She asserts that the process was procedurally unfair and that the lack of appropriate legal support undermined her ability to fairly present her defence or explain her position. She does not accept that the Defenders had proper and unbiased evidence before them. She rejects their conclusions. In any event their decision on sanction was too severe. I have taken the decision that, to try and ensure that the pursuers understands what the court has done and to, so far as I can, render my judgment in an open and transparent way that I will not attempt (as is usual) to precis arguments and submissions. I will refer to what was physically before me, in order that the pursuer will have, in one document, the whole sum and substance of the case and my decision.

12. I should make it clear that I have read every witness transcript verbatim and considered every document that was lodged.

The Panels Determination

13. In accordance with my determination to seek total transparency and understanding by the pursuer as party litigant, the entire Decision of the Panel is annexed as Appendix 1 hereto and should be referred to as if repeated here for the sake of brevity. The decision

sets out in detail the allegations, the evidence considered, the reasoning behind the Panel's decision to find the pursuers unfit and why they selected the sanction that they did.

The Pursuers Submissions

14. Pursuer asks the Court to overturn the Panel's Findings in relation to fact and impairment and to have all records of them amended as the Defender's and the Panel's reasoning and the processes they adopted during the investigation of the allegation against the Pursuer and during the Panel hearing were plainly wrong and manifestly inappropriate. The process was unduly protracted. However the Panel should have still have granted another adjournment, owing to her lack of effective legal counsel and should not have proceeded in the absence of the pursuer. The lack of legal assistance was in itself unfair. The Panel knew that the pursuer's daughter was assisting her but could not possibly commit 15 days to act as a lay representative or supporter because of her own family commitments. The general allegation that the Panel was acting on information that was flawed and actuated by animus against her was also advanced and the term "witchhunt" repeated. However, as I have said, I will not attempt to further precis or interpret the Pursuers submissions, in my own words, and I annexe these, as presented to me, as Appendix 2 hereto and should be referred to as if repeated verbatim here for the sake of brevity.

Defender's Submissions

15. The full written submissions for the Defender are in process for reference if required. The defenders are of course, legally represented and of course this is their debate on the relevance of the pursuer's case. I will therefore, precis their submissions but they will still be lengthy.

16. The Defender's submissions were in four sections. The Defender's legal framework; background to the decision; the approach the Court should take to the appeal; the grounds of appeal themselves. The structure of the legislation was not a central issue here and is referred to by me above and I need not repeat it here. The defenders did, however, touch on the impact of the Human Rights Act 1998. It is accepted that the Defender is a public authority in terms of Section 6 of the HRA. By virtue of6(1) of the HRA it is unlawful for a

public authority to act in a way which is incompatible with a 'Convention right'. Article 6(1) of the European Convention of Human Rights (ECHR) provides that inthe determination of his civil rights everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The defenders readily accepted that removal of the Pursuer from the register is a determination of her civil rights.

17. As a statutory body the Defender accepts a common law obligation to adhere to the principles of natural justice. It must exercise its powers and its discretion in good faith, lawfully, reasonably, rationally and properly. It must not exceed or abuse its powers. The requirements of natural justice depend on the circumstances of the case, the nature of the inquiry, the rules under which the hearing is conducted and thesubject matter that is being dealt with.

18. A Fitness to Practise Panel must not misdirect itself in law. It must reach a fair and rational conclusion. It must have adequate material to support the conclusion. It must not give improper weight to immaterial facts. It must not make perverse or irrational findings on matters material to the outcome. It must base its decision upon evidence that has probative value. It must have a sufficiency of evidence of a reasonable weight for its decision. Its decision mustnot be perverse of disproportionate. Its reasons must be adequate and properly articulated. Its decision must leave the Pursuer in no real and substantial doubt what the reasons for the decision were and what material considerations had been taken into account in reaching it. The Panel's decisions ought to setout its reasoning as to how it resolved important controversial issues.

19. The Scottish decision of *Gray v Nursing and Midwifery Council [2009] CSIH 68 (**Authority 1 in List of authorities**)* provides a useful analysis of the case law dealing with the approach the Court should adopt to appeals to the Court from the decisions of regulatory bodies. *Gray* takes account of both Scottish and English senior court decisions. In paragraph 12 of *Gray* there is an extensive quote from the case of *Gupta v General Medical Council [2001]1 WLR 1915:*

"In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better

position to judge the credibility andreliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed theirevidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position."

Gray also highlighted that the Court should be slow to interfere with sanction at paragraph 14, quoting extensively from *Graham v Nursing and Midwifery Council [2008] SC 659* (***Authority 2***)*:*

"The starting point, in considering an appeal of this kind, is to recognise that the appellate court will generally be reluctant to interfere with a decision made by a professional conduct committee. That reluctance will be particularly marked when the subject of the appeal is restricted to the question of the sanction imposed. It has long been accepted that a professional conduct committee will possess particular qualities of relevant experience and expertise and will normally be in a position to determine whatis the appropriate disposal. To such experience proper regard should be paid,and also to the professional conduct committee's view as to what is required in the way of the protection of the public and the reputation of the profession. Accordingly, the appeal court should not interfere with the decision of a professional conduct committee if it comes to the view that another disposal might in the circumstances have been preferable, or that, given a free hand, it would have imposed a different penalty. It is well settledthat the appropriate test which must be applied in an appeal of this kind if the disposal is to be set aside is that the penalty imposed can properly be described as excessive and disproportionate in all the circumstances of the case."

20. This approach was restated more recently in *Professional Standards Authorityv Nursing and Midwifery Council [2017] CSIH 29, (**Authority 3**)* at paragraph25:

"There is a well-established body of jurisprudence relating to the proper approach to appeals from regulatory and disciplinary bodies. The general principles can be summarised as follows. In respect of a decision of the present kind, the determination of a specialist tribunal is entitled to respect. The court can interfere if it is clear that there is a serious flaw in the processor the reasoning, for example where a material factor has not been considered. Failing such a flaw, a decision should stand unless the court cansay that it is plainly wrong, or, as it is sometimes put, "manifestly inappropriate". This is because the tribunal is experienced in the particular area, and has had the benefit of seeing and hearing the witnesses. It is in a better position than the court to determine whether, for example, a nurse's fitness to practise is impaired by reason of past misconduct, including whether the public interest requires such a finding. The same would apply inthe context of a review of a penalty."

21. These cases indicate that an appellate court should be reluctant to interferewith a decision of a professional conduct panel. They are specialist, experienced and knowledgeable panels who are trained to determine such cases. The Defender would come back to this point at various times during submissions but asked the Court to bear this in mind in their general approach to deciding this appeal.

22. The Pursuer had made lengthy averments and four general pleas-in-law to support these. The Defender's primary position was that the Pursuer's averments are lacking in specification and in large parts are irrelevant and as such should be dismissed. Large sections of the Pursuer's averments are in effect complaints about her former employer, REDACTED . The Pursuer's averments also contain several assertions along the lines of the Defender's investigation and hearings processes being prejudiced against her and disproportionate, but without averring any specific reasons for this. As a result, the Defender submits that we cannot tell exactly what the Pursuer's grounds of appeal actually are. The defenders in fairness, recognised that the Pursuer is in effect a party litigant without legal training, however the Defender can only meet the case set out against it. However, the case as set out denies the Defender fair notice of why the Pursuer considers the Defender to have erred in law, or arrived at the decision to impose a removal order based on an unreasonable

exercise of discretion, as per plea-in-law 1. The appeal therefore ought to be dismissed.

23. The defenders secondary position was that, in so far as they or the court, could or should discern the grounds of appeal they were ill founded, wrong in law and without merit. The grounds advanced seemed to fall into four generic heads: failure to postpone the hearing/proceeding in the absence of the Pursuer and proceed in her absence; the length of time the investigation process took; the witnesses who were called, and the approach taken by the Panel to their evidence and the reasons given by the Panel for their Findings in Fact. Finally the defenders identified the Pursuers fall-back position as the proposition that if the Panel were correct in their procedures and findings, which she of course denied, they should have considered a lesser sanction than removal to be appropriate.

24. By way of background, although the Pursuer ultimately acted as a party litigant, prior to the final hearing, she had legal representation from Duncan & McConnell solicitors. She was however unable retain them to represent her at the hearing itself and was not eligible for legal aid. She also received advice from the Glasgow Law Project, a clinic provided by law students. The Pursuer has suggested at various points in her averments and submissions that her inability to access legal aid and inability to pay for a solicitor privately rendered the process unfair in itself. The Defenders pointed out that they had no power over who is eligible for legal aid and who is not. There are many instances of parties being unable to fund the costs of solicitors. This does not and indeed cannot not make those proceedings unfair. These are public policy matters beyond any power or remit of the defenders.

25. The hearing was initially scheduled to begin on 23 September 2019. On 30 August 2019, the Pursuer made a request to have the hearing postponed to enable her time to liaise with the Glasgow law clinic to potentially obtain alternative representation. *(Production 10 for the Defender)* The Defender did not oppose this request and it was granted by the Chair of the Fitness to Practise Panel. *(Productions 11 and 12 for the Defender).* The

hearing was postponed until 22 January 2020. On 24 December 2019, the Pursuer submitted another postponement request, which was opposed by the Defender, and denied by the Chair of the Fitness to Practise Panel ***(Productions 13a, 14 and 15 for the Defender).*** The Pursuer at various points throughout her averments, suggested that she was close to securing part representation from the law clinic at this stage, and that the decision to deny her postponement request was unfair as a result. However, this simply is not factually accurate. There is nothing in the postponement request that states the clinic might have been able to provide part-representation, and there is nothing in the correspondence between the Pursuer and the Law Clinic to suggest this either. ***(Pages 9-29 of the Pursuer's productions)*** Indeed, it would appear from the Pursuer's timeline at page 9 of her productions and from the letter at page 23 of her own productions, that the Pursuer was told on 13 November 2019 that the Law Clinic could not and would not represent her. The commitment of time was beyond anything that a student driven voluntary organisation could support.

26. A further postponement request was submitted in writing on behalf of the Pursuer at the outset of the hearing. This also suggested that the Law Clinic may have been able to provide part representation, but again provided no evidence to support this assertion. This postponement request was considered by the Panel when making their decision to proceed in the absence of the worker, as outlined in the Notice of Decision *(see Appendix One)* The decision to proceed in the absence of the pursuer was reasonable in the circumstances and in line with both the procedural rules and the general case law in this area. The defenders own rules limit the circumstances in which a hearing canproceed in the absence of the worker. Where the worker is not present or represented at the hearing, regard must be had to whether reasonable efforts have been made to worker of the hearing; and inquire whether the clerk or the SSSC is aware of any reason forthe worker's non-attendance. It is not in dispute that the Pursuer was aware of the hearing, and the reasons for her non-attendance had been made clear in the submissions on her behalf.

27. The Minutes of the hearings and indeed as set out in the Decision (see Appendix one)

The Panel made it clear that, in reaching their decision, the Panel the leading criminal cases of *R v Jones [2002] UKHL 5* (***Authority 4***) and *R v Hayward [2001] EWCACrim 168* (***Authority 5***). *R v Jones* at paragraph 13 states, in reference to *R v Hayward*:

> *"I would stress, as the Court of Appeal did in paragraph 22 of its judgment, at pp 135-136, that the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant is represented and asks that the trial shouldbegin. The Court of Appeal's check-list of matters relevant to exerciseof the discretion (see paragraph 22(5)) is not of course intended to becomprehensive or exhaustive but provides an invaluable guide."*

28. Paragraphs 22(5) and 22(6) of *R v Hayward* state in exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of thecase including, in particular:

    - *the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case maybe and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;*

    - *whether an adjournment might result in the defendant being apprehended or attending voluntarily and/or not disrupting the proceedings;*

    - *the likely length of such an adjournment;*

    - *whether the defendant, though absent, is, or wishes to be, legallyrepresented at the trial or has, by his conduct, waived his right torepresentation;*

- *whether an absent defendant's legal representatives are able toreceive instructions from him during the trial and the extent to which they are able to present his defence;*

- *the extent of the disadvantage to the defendant in not being ableto give his account of events, having regard to the nature of the evidence against him;*

- *the risk of the jury reaching an improper conclusion about the absence of the defendant;*

- *the seriousness of the offence, which affects defendant, victimand public;the general public interest and the particular interest of victimsand witnesses that a trial should take place within a reasonabletime of the events to which it relates;*

- *the effect of delay on the memories of witnesses;*

- *If the judge decides that a trial should take place or continue in theabsence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits.In summing up he must warn the jury that absence is not an admission of guilt and adds nothing to the prosecution case."*

29. The Defender also referred to the case of *General Medical Council v Adeogba [2016] EWCA Civ 162* (***Authority 6***), which considered the guidance set out in *Jones* and *Hayward* in the context of professional regulation. Paragraphs 17-19 state:

"17. In my judgment, the principles set out in Hayward, as qualified and explained by Lord Bingham in Jones, provide a useful starting point for any direction that a legal assessor provides and any decision that a Panel makes under Rule 31 of the 2004 Rules. Having said that,however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under Rule 31 to continue a disciplinary hearing. Thislatter decision must also be guided by the context provided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public as set out in s. 1(1A) of the 1983 Act. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance.

18.It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but italso involves fairness to the GMC (described in this context as the prosecution in Hayward at [22(5)]). In that regard, it is important thatthe analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.

19.There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of thehealth and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

30. The defenders argue that it was clear from the section headed "Proceeding in absence" on pages 8 and 9 of the Notice of Decision ***(see Appendix One)*** that the Panel applied the law correctly and that their decision to proceed in the absence of the Pursuer was entirely reasonable. With regard to factors mentioned in the *Hayward*

case the Pursuer had voluntarily absented herself by her decision not to take part without representation. There was no evidence at any stage to suggest the pursuer was close to obtaining representation or part representation, and indeed the Pursuer's productions in the current demonstrate quite the opposite. As such, there was nothing to suggest that an adjournment would have led to the Pursuer taking part in the hearing or being meaningfully represented. Given the length of the hearing, it is likely that any adjournment would have had to be lengthy due to the practicalities of arranging such a hearing of the estimated duration engaged here.

31. The Pursuer had the benefit of legal representation, from responsible solicitors throughout until shortly prior to the hearing. Lengthy written submissions were prepared and bundles of Productions which were considered by the Panel. The Panel considered witnesses statements lodged by the pursuer and called for oral testimony two individuals that the pursuer wished to be heard in her defence (AA and her daughter BB who had also assisted as a supporter) As such, whilst absent, she was still able to give her account of events, which the Panel ensured was put to the witnesses. This maintained the fairness of the hearing.

32. The allegations against the Pursuer were very serious. With specific regard to the *Adeogba* case, the Defender has a statutory duty to promote high standards of conduct and practice among social service workers. There is therefore a high public interest in allegations of relating to fitness to practice being dealt. Any further postponement or adjournment would only have served to frustrate this process and would have been contrary to the public interest.

33. The Pursuer also referred to her mental health as being a reason she could not attend the hearing. However, the Pursuer has always spoken of this being an ongoing and indeed contemporary issue (as became clear during the conduct of the appeal) and there was never been any suggestion that this was likely to be resolved in early course. As such, this would not have been avalid reason to adjourn the hearing. The Pursuer had no averments andproduced no evidence to suggest that an adjournment

on the grounds of health would have led to her being able to take a meaningful part in the hearing at a later stage. The Defenders referred to *Forresters Ketley v Brent & Another [2012] EWCA Civ 324* ***(Authority 7)*** which states:

> *"An adjournment is not simply there for the asking. While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be neededto support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing."*

34. More generally in relation to the Pursuer's mental health, she had stated that her mental health deteriorated as a result of losing her job and due to the Defender's process. The Defender accepted that loss of employment and investigation by a professional regulator is likely to be stressful for any worker and can of course have an impact upon mental health. However, this is unavoidable. When someone's career is at stake, investigation is always likely be a stressful procedure for the worker involved. This does not render the eventual decision of the Panel to remove the Pursuer unfair.

35. The Pursuer throughout her averments made various reference to the length of time the process took, from when she initially referred herself to the SSSC , to the conclusion of the hearing. The Defender acknowledged that this was a lengthy process, but argued that this was a complex investigation, involving a great deal of paperwork and several witnesses. The length of time taken was also for the most part out with the Defender's control. The first disciplinary process that the Pursuer faced from REDACTED was mostly in relation to allegations of bullying behaviour directed at her by management. The Defender investigated these allegations but reached a decision that therewas insufficient evidence to support them, and they did not form part of the allegations that were eventually

referred to the Panel. While the Defender had been aware of the general nature of the allegations previously, the full extent of the allegations in relation to the Pursuer's practice as a social worker was not known to the Defender until receipt of the letter from REDACTED dated 4 November 2016. This letter enclosed paperwork from REDACTED own investigation, which led to the Defender making the decision to first seek a Temporary Suspension Order.

36. It then took until 22 January 2020 to convene the final hearing. This is a period of around 38 months. There is a letter from the Defender to the Pursuer dated 5 July 2018. This letter gives a rough timeline of what had happened in the case up until that point. A further Temporary Order Review hearing required to held; further case notes were received from REDACTED in July and October 2018, before the final witness statement was taken from CC in November 2018. It then took until January 2019 for CC to return this statement signed, at which point the decision making process began, which took some time due to the complexity of the case. The Pursuer was informed of the decision to seek a removal in April 2019, and from there, it took until January 2020 to convene the hearing, due to the length of hearing required, and the fact the initial hearing set down for September 2019 was postponed at the Pursuer's request.

37. The defenders conceded that throughout the case, it often took some time to receive information requested from REDACTED This was unfortunate but the Defenders powers to secure swifter progress were limited. No doubt, with the benefit of hindsight there were times when things could have been dealt more quickly by the Defender. However, the length of time was not so long as to affect the Pursuer's right to a fair hearing within a reasonable time under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Defenders referred me to the Privy Council case of *Procurator Fiscal, Linlithgow v Watson [2002] UKPC D1,* ***(Authority 8)*** which, between paragraphs 52 – 55 discusses the approach that courts ought to take to the reasonable time requirement :

"52. In any case in which it is said that the reasonable time requirement (to which I will henceforward confine myself) has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessaryto go further, since the convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, noteasily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into thedetailed facts and circumstances of the particular case. The Strasbourgcase law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting State to explain and justify any lapse of time which appears to be excessive.

53.The court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be takento prepare it adequately for trial and for any appellate hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable.

54.The second matter to which the court has routinely paid regard is the conduct of the defendant. In almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by making spurious applications and challenges, changing legal advisers, absenting himself, exploiting procedural technicalities, and so on. A defendant cannot properly complain of delay of which he is the author.But procedural time-wasting on his part does not entitle the prosecuting authorities themselves to waste time unnecessarily and excessively.

55. The third matter routinely and carefully considered by the court isthe manner in which the case has been dealt with by the administrative and judicial authorities. It is

plain that contracting states cannot blame unacceptable delays on a general want of prosecutors or judges or courthouses or on chronic under-funding of the legal system. It is, generally speaking, incumbent on contracting states so to organise their legal systems as to ensure that the reasonable time requirement is honoured. But nothing in the convention jurisprudence requires courts to shut their eyes to the practical realities of litigious life even in a reasonably well-organised legal system. Thus it is not objectionable for a prosecutor to deal withcases according to what he reasonably regards as their priority, so as to achieve an orderly dispatch of business. It must be accepted that aprosecutor cannot ordinarily devote his whole time and attention to a single case. Courts are entitled to draw up their lists of cases for trial some time in advance. It may be necessary to await the availability ofa judge possessing a special expertise, or the availability of a courthouse with special facilities or security. Plans may be disrupted by unexpected illness. The pressure on a court may be increased by a sudden and unforeseen surge of business. There is no general obligation on a prosecutor, such as that imposed on a prosecutor seeking to extend a custody time limit under section 22(3)(b) of the Prosecution of Offences Act 1985, to show that he has acted "with all due diligence and expedition." But a marked lack of expedition, if unjustified, will point towards a breach of the reasonable time requirement, and the authorities make clear that while, for purposes of the reasonable time requirement, time runs from the date when thedefendant is charged, the passage of any considerable period of time before charge may call for greater than normal expedition thereafter."

38. The Defender's primary position was that the length of time in this case should not on its face give grounds to real concern. While it is accepted that this was a lengthy process which may well amount to a departure from the ideal, it is submitted that the time period does not meet the high threshold to amount to an infringement of basic human rights. If the court was not satisfied by that argument then it was submitted that any passage of time that seems excessive can be justified.

39. As set out in the first area mentioned in the *Watson* case above, the Pursuer's case was exceptionally complex. It involved multiple allegations involving several different

service users, spread over a number of years. Many of the allegations relate to technical aspects of social work practice. The complexity of the case can be evidenced by the size of the productions bundle: this was in excess of 2000 pages. Nor was this all of the evidence that was gathered and examined either. There were additional allegations against the Pursuer that were, ultimately, not taken forward due to a lack of sufficient evidence. They still needed to be investigated in full. There were several witness statements that needed to be taken, and again, not all of these were in the final papers that were before the Panel.

40. It was also submitted that the vast majority of delay in this case was as a result of awaiting information being provided by REDACTED This was outwith the Defender's control, and bearing in mind the Defender's statutory duties to promote high standards of conduct and practice among social service workers, and to ensure that the safety and welfare of all persons whouse, or are eligible to use, care services are to be protected and enhanced, the Defender had no option but to continue the investigation into these extremely serious allegations notwithstanding these delays.

41. With regard to the fairness of the hearing and the Pursuer's ability to defend herself, it was submitted that because the nature of the evidence against her was largely documentary, the passage of time did not prejudice her to the extent that it might have done had the case been based more on the recollection of eye witnesses and the Pursuer. Notwithstanding the passage oftime, the Pursuer was still able to submit lengthy written submissions responding to the allegations against her. The Panel notes at page 12 of the Notice of Decision *(see **Appendix One)*** that "*It is largely on the basis of [the] records and reports that the facts supporting the allegations are found*."

42. The Pursuer has not made any specific averments that the passage of time prejudiced her defence of the case in any way. It was submitted that there is no evidence that had it been possible to hold the hearing at an earlier stage that the Pursuer's defence would have been any different. On a point related to the length of time the process took, the Pursuer made frequent reference to the fact that cases dating back as far as 2011 were

investigated, despite issues with them not being raised at the time. It was understood that REDACTED only became aware of these issues when the Pursuer's caseload was reviewed in light of the issues emerging in their disciplinary procedures. The Defenders were only made aware of the issues following the case review that was carried out. Clearly the Defenders could not have investigated the cases prior to being made aware of the issues.

43. The Pursuer in her averments alleged a failure on the part of the Defender to call certain witnesses who she wished to be heard. There were however no averments detailing why the Pursuer believes such a duty existed on the part of the Defenders in the first place. The Defenders procedures clearly gives workers the right to call their own witnesses at the various stages of the process. Had the Pursuer attended the hearing or obtained representation, she could have done this. There is no duty under the Rules or under any statutory or common law that the Defender is aware of that would require the Defender to have called witnesses at the Pursuer's request. That said, the Defender has a duty to act fairly in its processes, and had the Pursuer made any request to the Defender to help secure the attendance of any specific witnesses, it is likely that this would have been granted. However, this did not happen.

44. The Pursuer was aware of her right to call witnesses. The matter was discussed at the Case Management Meetings held on 16 July and 22 August 2019. The Pursuer, who at this stage retained Duncan & McConnell Solicitors, advised that she had identified her own witnesses and taken steps to arrange their attendance. The Defender was never asked for any assistance in ensuring their attendance. The Pursuer has averred that the failure to grant a postponement prevented the Law Clinic from being able to request that the pursuer's witnesses attend. There are no averments explaining why the Pursuer, or her daughter, or indeed Duncan & McConnell Solicitors, who represented the Pursuer up until the hearing commenced, could not have done this.

45. Two days before the hearing started, the Pursuer's representative sent various papers to the Defender. Within these documents, there were no requests made of the

Defender to call additional witnesses. There were unsigned statements from a DD and EE but no contact details. These people were not registered with the SSSC and thus not compellable witnesses. If it had been possible to call them as witnesses, it is not clear what questions the Pursuer would have had asked of them. Neither of the witness statements makes any specific reference to any of the allegations against the Pursuer. The Defender took steps to call a AA as a witness. This witness was clearly advanced by the pursuer as being favourable to her defence. This was done in fairness to the Pursuer because of the comments made about AA in the Pursuer's written submissions and because the Defender had already taken a witness statement from AA who is a registered worker and therefore had a duty under the Codes of Practice to attend as a witness if asked. The Defender was under no obligation to call either DD or EE as witnesses. If they had been called, there is nothing in the Pursuer's averments to suggest that they would have had any material difference on the outcome of the hearing. Their statements were before the Panel, who admitted them as late papers. The Panel notes at page 15 of the Notice of Decision that it "took great care and a considerable amount of time to review all of the documentation amounting tomore than 2000 pages". This would therefore include these statements. The Panel was aware of what these two individuals had to say.

46. The Pursuer has made averments concerning the Panel's assessment of the various witnesses' evidence, including that of the Pursuer's daughter, BB The Pursuer's averments suggest that the Panel either acted unfairly or erred in law by describing BB evidence as hearsay as she did not work with the Pursuer, whereas the Panel found other witnesses who didnot work directly with the Pursuer to be credible and reliable and placed weight on their evidence. The Defender's witnesses who did not work directly with the Pursuer wereCC FF , GG and HH The Defender submitted that the approach taken by the Panel towards the witnesses' evidence was both correct and reasonable. BB evidence was transcribed and available to the court. It is for the most part a hearsay account of what the Pursuer and others had told her about REDACTED disciplinary process, including unsubstantiated allegations of

collusion among witnesses and falsification of evidence. She gave little to no direct evidence in relation to the specific allegations that were made against the Pursuer. She at times strayed into the area of defence submissions and had to be reminded that she was a witness.

47. In contrast, the other witnesses mentioned above were called as they had been directly involved in REDACTED disciplinary investigations into the Pursuer. Their evidence is available at Productions 4a, 4b, 4e and4f for the Defender**.** All four are senior social work managers, who were able to speak directly to their involvement in the disciplinary processes and the work that they had carried out in relation to the Pursuer's caseload. Contrary to the suggestion in the Pursuer's averments, the mere fact that they did not work directly with the Pursuer does not render their evidence hearsay or any less relevant to the Panels deliberations.

48. With regard to the Panel's findings that all of the Defender's witnesses were reliable and credible, the Defenders reminded the court of *Gray v Nursing and Midwifery Council* mentioned above. There was no reason for the court to question the Panel's assessment of the reliability and credibility of the witnesses, and indeed there is nothing in the Pursuer's averments to suggest the witnesses should not have been found reliable or credible, other than further unspecified and unsubstantiated claims of collusion and prejudice.

49. The Pursuer averred that the Panel has failed to give adequate reasons for their findings in fact in relation to the allegations, and has suggested that the Panel failed to take into account the responses to the allegations that were submitted on the Pursuer's behalf. The defenders referred to a substantial body of case law in relation to what does and does not constitute adequate reasons. The Defender referred to *South Bucks District Council v Porter [2004] UKHL 33 (**Authority 9**)* which states:

> *"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matterwas decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing*

how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every materialconsideration. They should enable disappointed [parties] to assess their prospects of obtaining some alternative [relief]. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision"

50. This issue was reconsidered recently in a professional regulatory context in the case of *General Medical Council v Awan [2020] EWHC 1553 (Admin)* (***Authority 10***), which states :

"12. When I turn to examine the reasoning of the Tribunal, I remind myself that I should not expect the same standards of literary expression as those found in perfectly polished judgments from the Supreme Court. Phipps v General Medical Council [2006] EWCA Civ 397 establishes the proposition that the Tribunal is under no obligationto record in its reasons every point in favour of the doctor in the evidence it has heard and read. To my mind the best exposition of thisprinciple was given by Sir James Munby P in Re F (Children) [2016] EWCA Civ 546 where he stated:

"22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole and having regard to its context and structure. The task facing a judge is not to pass an examination, or to preparea detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; andto provide sufficient detail and analysis to enable an appellate courtto decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the

law. To adopt the striking metaphor of Mostyn J in SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."

51. Applying these standards to the current case, the Defenders submitted that the reasons given by the Panel in their decision were entirely adequate. The reasons given for the Findings in Fact are at pages 11-15 of the Notice of Decision. The Defender argued that the "principal important and controversial issues", as per *South Bucks District Council v Porter,* are in this case:

    - the Pursuer's stated position that the allegations against her came as a result of a vendetta against after she raised a grievance against her manager.

    - the Pursuer's perceived issues with REDACTED disciplinary procedures.

    - the Pursuer's allegations of collusion and fabrication of evidence from witnesses.

    - whether the specific allegations are factually supported by the evidence

52. The first three are covered by the fact that the Panel found the witnesses to be reliable and credible. The Panel also stated in the Notice of Decision:

    "The Panel found no evidence of your stated position which appears to be there was a vendetta against you by II *which came about because you had raised a grievance against her."*

    "The Panel had the documentary evidence in the bundle. As a way of background, the Panel heard from witnesses describing the REDACTED *Team as dysfunctional and as being split into two camps for no readily apparent reason. There was bad feeling about permanent posts being filled by persons seen as outsiders and not being the preferred choice of those already in the team."*

"The documents and evidence of witnesses also record 2013 to 2014 as a time of significant change for the REDACTED *Team and the services it was expected to deliver. The extent to which these changesproved to be a challenge, distraction or difficulty for you is not easy toascertain and understand but certainly appears to have contributed to what appears to be a breakdown in the relationship with* II *the last of three managers to have been your line manager in the* REDACTED *Team."*

"Irrespective of (a) the many changes as just described, (b) the acute issues that arose with the G family around December 2014 leading to a child protection conference being convened in January 2015, (c) thegrievance you raised against II *of bullying and harassment, (d) the two subsequent investigations into your practice resulting ultimately in your dismissal from* REDACTED *it was clear from the witnesses' evidence and documents that there were long term and chronic failings in your practice which do not arise fromthe changes and challenges arising in 2013 to 2014. Similarly, the allegations of misconduct at 2.d., 2.e., 7.d., 7.h., 7.i. and 7.l. cannot be attributed to these challenges and changes."*

"It may be the case that the REDACTED *investigations proceeded in an unusual or atypical way arising out of your grievance.However, in these two investigations into your practice there is no doubt that senior managers at* REDACTED *undertook detailed and thorough investigation and analysis into the case records for those service users or clients you were entrusted to care for. It is largely on the basis of those records and reports that the facts supporting the allegations are found."*

53. This clearly covered the Panel's findings in respect of the Pursuer's position in relation to the alleged vendetta against her. It enables any reader to understand why the matter was decided as it was, it discloses how the issues of fact were resolved, and it does not give rise to any substantial doubt as to how the Panel has reached its decision. Finally on this point the Defenders submitted that the specific allegations were supported by the evidence. The approach taken by the Panel in addressing this was to append the presenting solicitor's submissions to the Notice of Decision. The

Panel then, at pages 12-15 of the Notice of Decision, addressed each allegation in turn, noting their findings in fact, and noting the pages of the presenter's submission that detailed where in the Bundle the evidence in relation to each allegation could be found. In doing so, the Panel made it easy for any reader, armed with a copy of the papers, to find the exact elements of evidence in support of each allegation and be under no doubt why the conclusions on these allegations have been reached.

54. The Pursuer's position in relation to this as stated in her averments is that they did not go into enough detail in relation to the responses to the allegations that were submitted on her behalf, and suggested that they were not taken into account as a result. At condescendence 5. she stated:

> *"The pursuer attaches all answers to allegations and would ask that why these answers to each allegations were not disclosed alongside each allegation put on the final decision paperwork. The pursuer would advise that the defendant and their panel failed to consider these fully and these answers were not included in the final decision and the reasons why they were not put into final decision and reasons why they were not founded was never disclosed to pursuer. The pursuer requests that the defendant justifies why each response to allegations by the pursuer was unfounded by the defendant and the panel and their justification for each decision made by the defendant and panel."*

55. The Defenders submitted that this is not a reasonable expectation. This is partly due to the nature of the responses that were given to the allegations. They are for the most part references to other pages in the bundle with little or no explanation as to how the writer believes they relate to the allegations, or what conclusions are expected to be drawn from them. They also include photographs of diary pages and other documents, but with no witnesses to speak to the provenance or relevance of these, it is clear that the Panel could not have placed any weight upon them. The Panel notes on page 15 of their Decision:

"The Panel took great care and a considerable amount of time to review all of the documentation amounting to more than 2000 pages, and cross referenced the testimony of witnesses and your representations to ensure it had given full attention to the matters before it."

56. It is therefore clear that the Panel cross-referenced the pages highlighted in the Pursuer's responses with the other evidence that was before it. Given the nature of the Pursuer's responses, it is difficult to see what else the Panel could have done. In terms of "justifying why each response was unfounded" as the Pursuer avers the Panel should have done, this would have required the "detailed legal or factual analysis of all the evidence" and the mechanical incantation of passages from the evidence that the caselaw referred to above notes is not necessary. When read in conjunction with its appendix and the papers bundle, it is clear from the Notice of Decision why the Panel reached the conclusions they did on the allegations.

57. The Defenders then addressed the final point made by the pursuer on this issue. She averred that the Panel did not consider a lesser sanction than removal. Tied into this, the Pursuer has averred that the Panel failed to take into account the Pursuer's previous career. Turning first to this, the Pursuer avers at condescendence 2 that she "has worked for a period of 37 years as a social worker with an unblemished career". Firstly, this simply was not accurate. Pursuer's registration with the SSSC shows that she first qualified as a social worker in 1995, which is not 37 years ago. In any event, the Defenders acknowledged that the Pursuer's career was unblemished prior to her first disciplinary in 2015. However, this was noted by the Panel when making their decision, and was considered a mitigating factor by them. The Panel notes on page 20 of the Notice of Decision :

"The Panel accepted that you had no previous history with the SSSC, which was a factor that could be seen as mitigating."

The Panel also however identified several aggravating factors, which can be seen from the rest of the Impairment section in the Notice of Decision. It was simply not the case that the Panel failed to consider the Pursuer's previous career. It was just vastly

outweighed by the other factors in the case.

58. The Pursuer has averred at condescendence 7. that the Panel "*failed to take into consideration a less punitive sanction"* and has stated a plea-in-law that the Defender "*arrived at their decision based on an unreasonable exercise of discretion*". However, the Pursuer has not made any averments as to how the Panel's exercise of discretion was unreasonable, beyond a flat assertion that the Panel did not consider other sanctions. The rest of condescendence 7 suggested that the Pursuer had reached this conclusion purely on the basis that she disagrees with the Panel's decision to refuse the postponement. As above, the Defender's primary position was that these averments are lacking in specification and should be dismissed.

59. However, the Defenders further submitted that the SSSC rules set out the procedure to be adopted by a Panel when considering sanction. The available sanctions are listed at rule 20.2:

    a. To impose no sanction
    b. To impose a warning on worker's registration for up to 5 years
    c. To impose a condition on worker's registration
    d. To impose a warning and condition
    e. To impose a suspension order for period not exceeding 2 years
    f. To impose a suspension and condition
    g. To impose a removal order

60. Rule 20.9 goes on to state that when the Panel is considering what sanction to impose:

    a. They must have regard to the evidence presented by the parties
    b. They must take account of:
        i. the seriousness of the worker's fitness to practise
        ii. the protection of the public
        iii. the public interest in maintaining confidence in social

services, and

iv. the issue of proportionality

61 Further guidance for Panels is also provided by the Decisions Guidance *(Production 2 for the Defenders)*:

- There is an overarching duty to act fairly
- The seriousness of the behaviour is an important factor. Seriousness depends on the facts and circumstances of the particular case.
- Decisions must be proportionate. This involves a balancing exercisebetween the interest of the worker to work in their chosen profession and the interests of the wider public.
- When considering the decisions available the decision maker shouldstart with the least restrictive measure first, and if it does not address the public protection and public interest concerns the decision maker should move on to the next least restrictive.
- Having considered the interests of the worker and the interests of the wider public a decision maker must take the course of action considered appropriate, even though this may lead to reputation orfinancial difficulties for the worker.

62. Paragraph 8 on page 7 also gives guidance on the mitigating and aggravating factors the decision maker must consider and provides a list of examples. It is important to note that while the guidance shows examples it is made clear that other factors may be relevant, so this is not an exhaustive list. Accordingly, the Defenders submitted there was a clear procedure and guidance for panels to follow when deciding on sanction. The Notice of Decision demonstrates that the Panel first considered aggravating and mitigating factors in their decision on the issue of impairment, beginning on page 18. The Panel considered the following factors, and gave clear reasons for their findings:

- Seriousness
- Risk of repetition
- Previous history
- Circumstances leading up to the behaviour
- Length of time since the behaviour and subsequent practice
- Conduct inside of work
- Co-operation with the SSSC
- Pattern of behaviour
- Consequences of behaviour
- Abuse of trust
- Concealing wrongdoing

63. The Panel's decision on sanction then begins on page 24.

- The Panel noted that it heard again from the Presenter, and took into account the Pursuer's submissions, noting these suggested awarning or warning and condition would be appropriate.

- The section headed "Reasons for Decision on Sanction" began by noting again that the Pursuer's previous history was a mitigating factor, before again discussing the aggravating factors the Panel had considered at the Impairment stage, and the fact the Panel considered this to be a case where more serious action was required in terms of Section 10 of the Decisions Guidance.

- The first paragraph on page 25 notes "the Panel began with consideration of the least restrictive sanction" before giving clear reasons why it felt a warning was not appropriate.

- The second paragraph on page 25 gives clear reasons why the Panel felt that conditions, with or without a warning, was not appropriate.

- The third paragraph on page 25 gives clear reasons why the Panel felt that a suspension order, with or without conditions was not appropriate.

- The remainder of this section gives clear reasons why the Panel determined that a Removal Order was the only appropriate outcome in this case. In their reasons the Panel specifically acknowledge the potential financial and reputational impact, but have clearly weighed up the interests of the Pursuer with the public interest and decided this was the proportionate outcome.

64. It was the Defender's submission that in making its decision on sanction the Panel had correctly followed the procedure set down in the Rules, and also followed the Decisions Guidance. They had due regard to the various factors to be weighed up and the issue of proportionality. They reached a judgement on the appropriate sanction to impose based on these factors and clearly explained that in their decision. They made a decision they were entitled to make based upon the evidence they heard. There was nothing to suggest the Panel misdirected themselves in law by imposing a disproportionate sanction. There is nothing to justify the court interfering in the Panel's decision, as they should be reluctant to do following the guidance set down in *Gray v NMC* and *Graham v NMC* as set out above.

65. Finally, the Defenders addressed what might be referred to as sundry or tangential criticisms made by the Pursuer. The Pursuer suggested a lack of objectivity from the Defender founding upon an alleged failure to speak to the Pursuer about her cases. The suggestion that the Pursuer was not asked for her position on the allegations was simply untrue. The Pursuer was given the opportunity on a number

of occasions to make written submissions about the allegations,and indeed she did so. If the Pursuer's complaint in this regard is that the Defender did not take an oral statement from her, then this is because it would not have been appropriate for the Defender to do so. The Defender does not take oral statements from workers who are under investigation to guard against self-incrimination. This is to protect the fairness of the process.

66. There are references from the Pursuer to different page numbers being used. The Defender explained that it appeared that the Pursuer had retained bundles/pages from bundles from previous Temporary Order Hearings. These bundles contained different documents and so were numbered differently to the bundle that was used in the final hearing. If the Pursuer had referred to previous bundles and become confused over the correct page number asa result, this is outwith the Defender's control.

67. The Pursuer also mentioned an alleged overheard conversation on a train involving a panel member from one of the Temporary Order Hearings. This has never been suggested to the Defender prior to the submissions and there is no evidence to support the claim. It is a mere assertion. In any event this is not related to the final impairment hearing that is the subject of this appeal and is therefore irrelevant. The Pursuer makes a bald assertion that the case notes from her cases had been"manipulated" by REDACTED prior to them being sent to the Defender. No evidence had been provided to support this claim. It would appear to be simply baseless.

68. For the reasons outlined above, the Defender invited the court to repel the pleas-in-law advanced by the Pursuer and refuse the appeal. The Defender does not seek expenses from the Pursuer, so would ask the court to dismissthe summary application with no expenses due to or by either party.

Discussion

69. I know that this will be a great disappointment to the pursuer but after due deliberation and consideration of the procedures followed, having read every word of evidence considered by the Defenders Panel and all other papers that were before them, I can find no fault in the Defenders actions and I accept their submissions in their entirety. I am unable, on balance, to hold that there was a serious flaw in the process or the reasoning, of the Panel : for example where a material factor has not been considered. Equally I cannot say that the outcome was plainly wrong, or manifestly inappropriate

70. I reject the pursuer's submissions. In my judgment the pursuer's averments are largely irrelevant and in any event entirely unsupported by the facts. Moreover, the pursuers submissions, in so far as I could understand them entirely misunderstand the Defender's role as a regulator; its discretion to investigate any allegation which it receives; its discretion to obtain and consider statements when doing so; the status of a fit to practice Panel and its statutory role.

71. The Act and the Rules *inter alia* require the Defender to fulfil two classes of function. First, it must maintain the register, promote appropriate standards of practice by registered workers and provide procedures to admit, remove and if necessary restore the names of workers from it. In the exercise of that function, the Defender published the Code, a document which the Pursuer admits he knew about and required to work under it.

72. Second, the Defender must act as a gatekeeper if an allegation is made about a registered worker. In the exercise of that function, the Act, the Regulations and the Rules require the Defender to follow a defined procedural path.

73. When it receives an allegation, the Defender must form an opinion on it. It must decide if the allegation is specific and relates to a named worker. If it does, the Defender must assess the allegation and come to a reasoned opinion – it must

determine whether, if the allegation was proved, it would be likely to lead to a finding that the worker's fitness to practise was impaired.

74. Implicitly, if the allegation does not pass initial assessment, the Defender need take no further action. If it does pass that stage, the Defender must then decide whether to investigate it.

75. If an investigation commences, the Rules create a rebuttable presumption that the worker and any employer should be advised of the allegation. During it, unfettered discretion is conferred on the Defender to seek information from any person or source and to seek an order temporarily suspending the worker's registration, either consensually or from a Panel.

76. After the investigation concludes, the Rules confer discretion on the Defender to follow one of three paths:-

- it may decide to take no further action
- if the worker consents, the Defender may itself impose one of six specified sanctions
- if the allegation is not accepted, the Defender may refer the case to a Panel for consideration

77. The nature of the three options confirms that the underlying purpose of investigation is to enable the Defender to decide whether the worker has a case to answer. As every allegation will be fact specific, the nature and extent of every investigation will vary, hence the need for unfettered discretion to request information from any person or source.

78. In this case, the evidence shows that the Defender received an allegation from REDACTED and decided to investigate it. A Panel, as a matter of law, is part of the Defender. The Regulations confer power on the Defender to create a framework to implement and administer its obligations and, *inter alia,* permit it to form committees, and committees to form sub-committees. A Panel is a sub-committee formed by the Defender's Fitness to Practise Committee. The manner in which a

Panel must operate is also controlled by the Defender through Rules it directly promulgated. Rules which also provide that Panel members are appointed by the Defender.

79. In essence, the Panel is a necessary consequence of the Defender's gatekeeping and investigatory functions, one which is contingent on a dispute arising on either temporary suspension or a sufficiently serious allegation which could cause impairment and merit sanction. A Panel's link to the Defender is also an inevitable consequence of the Act, which was passed by a Scottish Parliament after due process and the consent of whose Ministers is a prerequisite of any Rules the Defender proposes to promulgate.

80. A Panel is independent as its members are publicly recruited, interviewed, sit for fixed terms and are not employed by it. Instead, they are paid a daily rate for attendance, which prevents any accusation of advancement. The Panel operates from separate accommodation and does not liaise with the Defender's Fitness to Practise Department. It has no access to its IT network. The Defender's Hearings and Fitness to Practise Departments are entirely separate. There was no question of the Panel being incompetently constituted as its members fulfilled the criteria provided for by the Rules. In any event, the Panel's independence and impartiality was preserved by the right of full appeal in s.51. I simply cannot accept and must reject the Pursuer's submission that the Panel in her case was not impartial or in any other way unfair, nor was there a scintilla of evidence that she was the victim of collusion by witnesses.

81. The Pursuer's misapprehension of the Defender's investigative role also undermines her submission that the Defender was unfair when it relied upon statements and evidence from a flawed original investigation by REDACTED what she categorised as a "witch hunt". Legally, that is not what occurred. Put simply, the statements record information sought by the Defender to assist it making a decision on whether to take the allegation forward and, if so, in which way. That analysis is supported by other provisions in the Rules. In this way, a Panel which later hears oral

evidence from the witness who provided the statement to the Defender has authority to assess what, if any, weight it should attach to it. The Panel heard oral testimony from numerous witnesses and formed their own independent assessment of credibility, reliability and reached their own conclusions.

82. The Panel heard evidence from witnesses from the original REDACTED investigation. However, they also called AA and the pursuer's daughter BB at the behest of the pursuer and noted what they had to say. I have carefully considered the transcript. Each of the witnesses, who the pursuer castigates as part of the "witch hunt" was examined quite rigorously by the Defender's presenting officer on the points of challenge and criticism advanced by the pursuer in her papers and submissions. The statements in her support from DD and MM were put to witnesses for their comment. It is not the function of this court, within the legislative framework that governs such appeals, to consider the evidence before the Panel again. The fact that I might have assessed the evidence of one witness or another differently from the Panel is not the legal test.

83. It is not my role to make the decision of the Panel again. Instead, it is for me to consider whether the decision of the Panel was plainly wrong or manifestly inappropriate. The Panel was not evaluating the pursuers work record but her fitness to remain on the Register of Social Workers. The reasons for the Panels decision were properly set out and communicated to the pursuer. The conclusion reached was one which, in all the circumstances, I hold, as matter of law and on the facts, that the Panel was entitled to reach. The case cited above makes it quite clear that as a matter of law I cannot interfere with their discretion to protect the integrity of their profession. The decision of a specialist tribunal must be respected and it is not for the court to overturn such a decision because it disagreed with the outcome if it was one that fell within the proper ambit and scope of a tribunals powers. I can find no error in what they did and I am bound to respect their specialist knowledge and professional opinions enshrined in the statutory disciplinary scheme approved by Parliament

84. Turning to the pursuers procedural or systemic criticisms. The process was undoubtedly protracted. The court would hope that the Defenders will keep their procedures under review and identify, from this process, areas for systemic improvement. However these were complex issues and much of the delay centred upon the information gathering. The pursuer was as anxious as the Defenders that the REDACTED process was scrutinised in great detail. The delays whilst clearly unfortunate, do not amount to a breach of the pursuer's right to a fair determination within a reasonable time. She has not advanced any evidence of hindrance in the presentation of her defence; witnesses had not vanished or their recollection dimmed. The pursuer suggests that the delay allowed records to be lost or manipulated (such as the electronic diary system called "SWIFT") but such allegations were squarely put to the witnesses by the Defenders presenting officer or members of the Panel themselves and rebutted. It is for the Panel to assess the veracity and weight of that evidence. The fact that they accepted it cannot be criticised by this court. Indeed, it is an undisputed fact that the pursuer sought to delay matters even more by seeking an adjournment (which was granted) and then a second adjournment (which was refused) of the full hearing. There is simply no merit in this point.

85. Equally, the decision to refuse the second adjournment cannot be criticised. The pursuer had already been granted an adjournment which caused, as I have said, considerable delay. The grounds for the adjournment (lack of legal support) were exactly the same. The Panel was aware that their decision might mean that the pursuer was not represented or indeed (as was the case) that the hearing would proceed in her absence. The record of proceedings makes it clear that the Panel deliberated upon the request at some length. The Chair set out the legal tests as explained above. She referred to the appropriate case law for guidance referred to above (*R v Jones* and *R v Hayward*) and the Panel applied them properly. Moreover, there is no substance in the pursuer's assertion that an adjournment might have allowed her to obtain legal support whether by paying for solicitors or from the voluntary sector. This was simply untenable in the circumstances of the case.

86. She also suggests that with an adjournment she might have been able to attend the hearing without counsel and defend herself. I accept the position adopted by the Panel that there was no reasonable prospect of this being so. It seems clear to me that the situation of the pursuer in terms of her health and overall capacity to participate in the hearing process was ongoing and with no end in sight. The Panel were correct to balance the need to reach a decision in a serious regulatory process against the actual prospect of the pursuers participating and in my opinion their decision to proceed was entirely proper.

87. The lack of legal counsel for the Hearing was highly regrettable but responsibility for this cannot be laid at the door of the Defenders. The statutory scheme within which they operate makes no provision for either financial support or the direct provision of legal services for regulated workers. This is the proper province of the Scottish Legal Aid Board. The decision not to assist the pursuer by the authorities is a matter of Public Policy and fundamentally a political decision beyond the scope of either the Defenders or indeed the court to criticise. Assistance might be had from trade unions or even private litigation insurance but these are private considerations, and they cannot be the responsibility of the Defenders.

88. The pursuer did, of course, have a measure of support. Duncan and McConnell are well known Dundee court Solicitors. They provided assistance throughout the procedural stages. They could not undertake the commitment to a hearing, estimated to last 15 days, without remuneration. Equally, the students of the Glasgow Law Project clinic provided support to the pursuer but to expect them to represent her at a 15 day hearing was equally unrealistic. Indeed the pursuers own daughter, who provided a measure of lay support (she is herself a social worker) made it clear to the Panel that she could not commit to the hearing as she had family and work commitments. Any support that was not properly funded was frankly unsustainable.

89. The pursuers fall back position was that even if the Panel decision is not wrong or unjust, the penalty was severe. Indeed there cannot be a more severe outcome than

removal from the Register, but as the cases cited to me make abundantly clear it is for the Defenders and they alone to assess the pursuers fitness to remain on the Register of Social Workers. The reasons for the Panels decision were properly set out and communicated to the pursuer. The pursuers appeal, properly construed, on the question of sanction sought to invite the court to interfere with the decision, not because it was wrong in law, but because the penalty selected was harsh: this is beyond the power of the court, unless the penalty was so harsh no reasonable tribunal could have imposed it. The decision of a specialist tribunal must be respected and it was not for the court to overturn such a decision because it disagreed with the outcome or might have imposed a lesser penalty. The conclusion reached was one which, in all the circumstances as set out in their Notice of Decision, the Panel was entitled to reach. There is no merit in the pursuers argument on sanction and I cannot interfere with it.

90. For all of the reasons set out above I reject the Pursuers submissions and repel her pleas in law; I sustain the Defenders pleas and dismiss the appeal. No expenses were sought and none will be awarded.

SHERIFF

NOTICE OF DECISION

IMPAIRMENT HEARING

Worker	BE
Registration Number	**1095235**
Part of Register	**Social Workers**
Decision	**To impose a Removal Order**
Date of Effect	**1 March 2020**

Decision

This is a Notice of the decision made by the Fitness to Practise Panel (the Panel)of the Scottish Social Services Council (the SSSC) which met on Wednesday 22,Thursday 23, Friday 24, Monday 27, Tuesday 28, Wednesday 29, Thursday 30, Friday 31 January, Monday 3, Tuesday 4, Wednesday 5, Thursday 6 and Friday 7 February 2020 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

At the hearing, the Panel decided that some of the allegations against you were proved, that your fitness to practise is impaired, and made the decision to impose a Removal Order on your Registration in the part of the Register for Social Workers.

Date of effect

The decision to impose a Removal Order comes into effect on 1 March 2020; or,if you appeal, once the appeal is determined or abandoned.

Your right of appeal

You can appeal against this decision to impose a Removal Order in terms of Section 51 of the Regulation of Care (Scotland) Act 2001 (the Act). If you decide to appeal it, you must make the appeal to the Sheriff at Dundee SheriffCourt, Sheriff Court House, 6 West Bell Street, Dundee, DD1 9AD. You must make the appeal by 29 February 2020.

Matters taken into account

In coming to its decision, the Panel had regard to these documents:

- the Act
- the Code of Practice for Social Services Workers in force prior to 1 November 2016 (the Code)
- the Scottish Social Services Council (Fitness to Practise) Rules 2016 asamended (the Rules)
- Decisions Guidance for Fitness to Practise Panels and Scottish Social Services Council staff dated November 2016 (the Decisions Guidance)

Allegations

The allegations against you at the hearing were as follows:

While employed as a social worker by REDACTED and during thecourse of that employment, you did:

1. on dates between on or around 23 June 2011 and on or around 10 June 2013, and on dates between on or around 30 May 2014 and on or around 14 April 2015, as the allocated worker for Child A, who had significant disabilities:

    a. fail to discuss the following issues with the parents or take any action to investigate whether they were having an impact on the parents' ability to care for Child A:

i. allegations made by Child A's mother that Child A's father was abusive

ii. an allegation made by Child A's mother of childhood sexual abuse perpetrated by her brother

or in the alternative fail to record any action you took in this regard

b. fail to take any action to investigate whether Child A's father's alcohol abuse was impacting upon the parents' ability to care for Child A, or in the alternative fail to record any action taken in this regard

c. fail to make any contact with Child A's family between on or around 19 July 2011 and on or around 13 June 2012, or in the alternative fail to record any contact during this time

d. fail to make any record of a meeting that was to have taken place at Child A's school on or around 6 June 2012 following reports from the school that Child A's mother had smelled of cannabis on or around 14 May 2012 and had been distressed at a parents' evening on or around 31 May 2012

e. with regard to a home visit to Child A's mother on or around 14 June 2012, following the reports from Child A's school mentioned at d. above and an incident on or around 23 May 2012 when Child A's mother had been heavily under the influence of alcohol and had reported to the police that Child A's father had assaulted her:

i. advise Child A's mother during the visit to contact the REDACTED Service to make a referral with regard to difficulties she was having with Child A, despite the fact that you were visiting her on behalf of the REDACTED Service

ii. fail to take any action to follow up on this visit or the concerns that had been raised, or in the alternative, fail to record any follow up action

f. fail to record any contact with Child A's family between on or around 15 June 2012 and on or around 24 June 2013

g. fail to take any action following a referral being received on or around 15 August 2012 regarding Child A's father threatening Child A's mother with a knife and Child A's father being arrested on suspicion of robbery, or in the alternative fail to record any action taken in this regard

h. fail to respond to an email from Occupational Therapist MT on or around 2 October 2012 requesting information from you about Child A's care package, or in the alternative fail to record any response

i. following being told that Child A's father had been imprisoned for robbery on an exact date unknown prior to 11 October 2012

i. fail to record this information in Child A's case notes

ii. fail to take any action to assess the impact of this upon Child A and his mother, or in the alternative, fail to record any action taken in this regard

iii. between on or around 30 May 2014 and on or around 20 April 2015, following a request from a paediatrician for an assessment of Child A's needs:

i. fail to complete the assessment when the case was allocated to you for this reason

ii. fail to carry out a home visit you had arranged for 12 June 2014, or in the alternative fail to record this visit

iii. fail to do any work on the case or make any contact with the family, despite the fact that during this period the family were living in temporary accommodation following a house fire, or in the alternative

fail to record action taken in this regard

k. fail to make Child A's family aware of services, and in particular respite services, that would have been available for them and Child A

2. on dates between on or around 26 October 2012, when the case formally transferred to you at a review hearing, and on or around 14 April 2015, as the allocated worker for Child B, who was a Looked After Child in terms ofthe Looked After Children (Scotland) Regulations 2009:

a. fail to maintain adequate contact with Child B in terms of section 46(2) of the Looked After Children (Scotland) Regulations 2009, which requires that a visit be made to the child once every three months, in that you failed to visit Child B:

i. between on or around 27 October 2012 and on or around 11 February 2013

ii. between on or around 13 February 2013 and on or around 2 September 2013

iii. between on or around 3 September 2013 and on or around 30 January 2014

iv. between on or around 10 May 2014 and on or around 4 September 2014

or in the alternative, fail to record any visits carried out between these dates

b. fail to carry out a home visit you had arranged for 27 November 2013, or in the alternative fail to record the visit

c. on exact dates unknown after you agreed to obtain updated photographs from Child B's mother for Child B on or around 10 February 2014:

i. fail to record contact you had with the hospital where Child B's mother was staying to obtain the photographs between then and on or around 15 July 2014

ii. fail to record whether or not you ever gave the photographs to Child B

d. on or around 15 July 2014, advise your manager LS in supervision that you were seeing Child B approximately monthly, when this was not true

e. by your actions at d. above act dishonestly

f. having met with Child B, his carers and a doctor on or around 27 November 2014 to discuss Child B undergoing genetic testing, fail to have any follow up discussions with Child B or his carers regarding this, or in the alternative fail to record any discussions

3. on dates between on or around 24 August 2012 and or around 14 April 2015 as the allocated worker for Child C, who was a Looked After Child interms of the Looked After Children (Scotland) Regulations 2009:

a. fail to make any contact with Child C's mother until on or around 30 November 2012, or in the alternative, or in the alternative fail to record any contact prior to this

b. fail to meet Child C for the first time until on or around 4 January 2013

c. fail to respond to the following emails, or take any action upon their receipt, or in the alternative fail to record any responses or action taken:

i. email received on or around 25 February 2013 from Child C's mother raising concerns about Child C's mental state ahead of his return to school

ii. email received on or around 23 April 2013 from Child C's school asking you a direct question about arrangements for a visit

iii. email received on or around 8 March 2014 from Child C's school raising concerns about Child C presenting as anxious, upset and experiencing extreme OCD

iv. email received on or around 11 November 2014 from Child C's mother regarding difficulties Child C was having at college and specifically asking you for your thoughts on this

d. fail to maintain adequate contact with Child C in terms of section 46(2) of the Looked After Children (Scotland) Regulations 2009, whichrequires that a visit be made to the child once every three months, in that you failed to visit Child C between on or around 26 October 2013 and on or around 9 February 2015, or in the alternative fail to record any contact in this time

e. fail to carry out a visit to Child C arranged for 11 February 2014, or in the alternative fail to record this visit

f. fail to respond or take any action following a report made to you by Child C's mother on 4 March 2014 concerning her son's mental health deteriorating and including references to self-harm and suicide ideation

g. fail to carry out a visit to Child C arranged for 14 April 2014, or in the alternative fail to record this visit

4. on dates between on or around 12 March 2013 and in or around April 2015, as the allocated worker for Child D, fail to undertake any work or make any contact with the family after on or around 17 July 2014, with the result that you were not aware that the family were no longer receiving any services as of January 2015

5. on dates between on or around 15 April 2013 and on or around 14 April 2015, as the allocated worker for Child E:

a. fail to record any reason why Child E's father had been imprisoned

b. following a telephone call on or around 4 July 2013 from Child E's mother, who was in a distressed state:

i. fail to visit Child E's mother that afternoon after informing her that you would, or in the alternative, fail to record the visit

ii. fail to take any follow up action until on or around 26 July 2013, or in the alternative, fail to record any action taken in this time orthat the situation had been resolved

c. fail to make any contact with the family after 26 August 2013, or in the alternative fail to record any contact

d. record only one case note between on or around 27 August 2013 and on or around 9 February 2015

e. with regard to a referral you made to Barnardo's Intensive Support Service on or around 5 March 2014:

f. fail to record that you had made this referral or the reasons for doing so in Child E's case notes

g. fail to take any other action to support the family at this time, or in the alternative fail to record any action you took

f. fail to take any action in response to an email from Barnardo's received on or around 15 April 2014 advising that the family had put their services on hold, or in the alternative fail to record any action taken

6. on dates between or around 4 July 2013 and on or around 4 April 2015 as the allocated worker for Child F:

a. fail to record a conversation you had with Child F's mother on or around 11 November 2013 that led to her phoning your manager

b. after being informed on or around 18 November 2013 that a prospective foster carer was unable to provide Child F with respite care, fail to inform Child F's mother of this, or in the alternative fail to record this

7. make only three direct contacts with Child F, or in the alternative record

only three direct contacts

7. on dates between on or around 7 August 2013 and on or around 7 January 2015, and during the course of that employment as the allocated worker for Child G1:

   a. fail to complete a Graded Care Profile for Child G1, when it had been agreed in your supervision on 8 August 2013 that you would do this

   b. fail to maintain fortnightly visits to Child G1 after you agreed to do so on or around 25 February 2014, in that you only recorded three home visits after this (on or around 8 July 2014, on or around 29 September 2014 and on or around 5 January 2015)

   c. following the withdrawal of a morning service provided by Barnardo's on exact date unknown in or around October 2014:

      i. fail to record that this service had stopped

      ii. fail to take any action to ensure that the family still had appropriate services in place, or in the alternative fail to recordany action you took in this regard

   d. on or around 15 October 2014, suggest that your line manager PC observe a meeting regarding Child G1 and then advise the meeting that PC was there to chair the meeting, having not discussed this with PC previously

   d. fail to carry out a home visit that had been arranged for 7 November 2014, or in the alternative fail to record this visit

   e. fail to record a planning meeting that took place on or around 19 November 2014 in G1's case notes

   f. on dates between on or around 19 November 2014 and on or around 21 November 2014, following concerns being raised about Child G1 and his sister Child G2's welfare at a planning meeting on 19 November 2014, fail to:

      i. inform your manager of the concerns that had been raised

ii. take any action to address the concerns that had been raised, orin the alternative fail to record any action taken in this regard

h. fail to instigate Public Protection Unit (PPU) checks on Child G1's mother's new partner when you were asked to do so by your manager PC following a child's planning meeting on 4 December 2014

i. advise Child G1's mother at the end of the child's planning meeting on 4 December 2014 that no checks would be undertaken on her partner as this would be contrary to her human rights, when this was not a decision that had been made and was not true

j. on or around 18 December 2014, refuse to advise Child G1's mother of the outcome of PPU checks that had been carried out on her partner when asked to do this by your manager PC

k. record a case note following a home visit on 5 January 2015 that did not mention the current welfare of the children or the state of the home despite concerns having recently been raised about both of these

l. on or around 7 January 2015, inform your manager PC that you would not do the following, having been instructed by PC to do so, stating that you were not competent to do so, or words to that effect:

i. complete the necessary reports and invites that were required for an Initial Child Protection Case Conference (ICPCC) that had been arranged for 16 January 2015

ii. undertake the ICPCC itself

8. on dates between on or around 9 February 2014 and on or around 8 April 2015, as the allocated worker for Child H, fail to carry out an arranged home visit with community nurse JY on 16 February 2015, or in the alternative fail to record this visit

9. as the [allocated] worker for Child I, following a telephone call from the mother of Child I on or around 17 February 2015, when she reported to you that she was

struggling to cope and had considered phoning "to take him away", fail to carry out an arranged home visit on or around 20 February 2015,or in the alternative fail to record this visit

10. on dates between on or around 25 March 2014 and on or around 14 April2015, as the allocated worker for Child J:

    a. fail to carry out any work on the case between on or around 25 March2014 and on or around 15 February 2015, or in the alternative fail to record any work you did in this time

    b. fail to take any action following a referral received in September 2014 concerning the mother self-harming and being taken to hospital by the police after she threatened to jump out of the car on the drive to a family holiday, or in the alternative fail to record any action taken

and in light of the above your fitness to practise is impaired because of your misconduct as set out as set out in allegations 2.d., 2.e, 7.d, 7.h., 7.i., 7.j. and 7.l., and because of your deficient professional practise as set out in the remaining allegations.

Preliminary matters

Proceeding in absence

You were neither present nor represented at the hearing. The Panel therefore had to decide whether or not to proceed in your absence.

The Clerk advised that the Initial Notice of Referral and bundle of papers were sent to you on 21 May 2019 and delivered on 22 May 2019, signed for by BD

Four Case Management Meetings (CMMs) were held prior to the hearing. The first Record of Meeting (ROM) was sent to you on 30 July 2019 and was delivered on 31 July 2019 signed for by "BD ". The second ROM was sent to you on 16 August 2019 and was delivered on

17 August 2019 signed for by "REDACTED The ROM from the third and fourth CMMs were both sent to you on 30 August 2019 and were delivered on 31 August 2019, signed for by "REDACTED

There have been two postponement requests submitted by you. The first postponement decision was sent to you on 12 September 2019 and was delivered on 13 September 2019, signed for by "REDACTED The second postponement decision was sent to you on 7 January 2020 and delivered on 8January 2020, signed for by "REDACTED

Seven day papers were sent to you on 15 January 2020 and delivered on 16January 2020, signed for by "REDACTED

On 9 January 2020, the Clerk spoke to your daughter on the telephone. Your daughter confirmed in this telephone call that you would not be attending the hearing and you would not be represented. On 14 January 2020, JJ Representative for the CMM's, again confirmed in a telephone call to the Clerk that you would not be attending the hearing.

The Panel was satisfied that you had been served with the hearing Notice and the evidence as required by the Rules, and that reasonable efforts had been made to contact you. It was the view of the Panel, that you had voluntarily absented yourself on the basis that you did not consider you could participate in the hearing without legal representation and that was not available to you. That had been the position for some considerable time and appeared to the Panel unlikely to change. You had asked again in the late papers for a postponement or an adjournment of the hearing. There was nothing to suggest that you would attend, without legal representation, if the hearing was adjourned. The Panel could see no purpose in adjourning the hearing which had already been postponed for the same reason, without any change in your circumstances. It was in the interests of both parties that matters were progressed without delay given the age of the allegations and the considerable delay that had already occurred. The Panel was aware in your absence, and in the absence of legal representation, it had a responsibility to ensure matters raised by you were put to relevant witnesses.

The Panel therefore decided to proceed in your absence.

Late papers

The Presenter had late papers listed and numbered as follows:

- Statement of AA (F1649-F1654)
- Case Notes for Child E (F1655–F1622).

The Panel decided that admission of the late papers was necessary to ensure thefairness of the proceedings and that this outweighed any prejudice to you. The papers were admitted in terms of Rule 35. and numbered as detailed above.

You had late papers, the Clerk was sent submissions from JJ and your daughter, to put before the Panel on the day of the hearing. These are listed and numbered below. The Presenter did not object to the lodging of thelate papers.

- Submissions - preliminary matters (W1-W2)
- Submissions – Findings in Fact (W3-W4)
- Submissions - Impairment (W5-W6)
- Submissions - Sanction (W7)
- Document entitled witness statement of DD taken by JJ (W8-W9)
- Document entitled witness statement of EE taken by JJ (W10)
- Letter from SSSC to You dated 17 August 2018 (W11-W16)
- Email from BB with Child A allegations (W17-W31)
- Child B allegations (W32-W44)
- Child C allegations (W45-W60)
- Child D allegations (W61-W64)
- Child E allegations (W65-W69)
- Child F allegations (W70-W78)
- Child G allegations (W79-W88)
- Child H allegations (W89-W93)
- Child I allegations (W94-W97)
- Child J allegations (W98-W100)
- Reference from AA dated 30 April 2013 (W101)

- Letter from SSSC to You dated 5 July 2018 (W102-W103)
- Postponement Decision dated 31 December 2019 (W104)
- Copy of page F995 of the bundle (W105-W106)
- Copy of page F115 of the bundle (W107)
- Copy of page F1597 of the bundle (W108)
- Copy of page F1489 and F1598 of the bundle (W109)
- Copy of page F1490 of the bundle (W110)
- Copy of page F1492 of the bundle (W111)
- Copy of page F1491 of the bundle (W112)

The Panel decided that admission of the late papers was necessary to ensure the fairness of the proceedings and that this outweighed any prejudice to the SSSC. The papers were admitted in terms of Rule 35. and numbered as above.

You sent, or papers were sent on your behalf, for the hearing recommencing on 3 February 2020 following your daughter giving evidence on 31 January 2020.

The Panel decided that these papers should not be admitted as they were not relevant.

Amendment and withdrawal of allegations

The Presenter withdrew allegation 8. in the course of leading evidence. During her submissions on findings of fact the Presenter sought to amend:

(a) allegation 6.c. by changing the word “three” to “two” where it occurs.

(b) allegation 7.b. by adding after G1 the words “’s mother”

(c) allegation 9. by changing the words “allocated worker” to the words "worker responsible”.

The Panel allowed these amendments.

In the course of its deliberations the Panel considered the following

amendments:

(a) allegation 1.c. change date 13 June 2012 to 5 June 2012

(b) allegation 1.f. change 24 June 2013 to a date in June 2013

(c) allegation 6.c. by changing the word "two" to "one" where it occurs.

(d) allegation 7.l.ii. by adding the words "or attend".

Evidence was led by the Presenter from witnesses detailed and summarised in her submissions. These are attached at Appendix 1. The Panel accepts her submissions at pages 1 to 2 of Appendix 1 with regards to the onus and burdenof proof.

The Presenter led AA as a witness as you wanted her evidence to beheard. The Panel asked questions and asked those questions submitted by youwhere appropriate.

Your daughter, BB gave evidence by videoconferencing (VC) andthe Panel noted submissions on your behalf in the late papers W3-W4.

Findings of Fact

The Panel had little difficulty in finding the witnesses called by the SSSC credible and reliable.

Where witnesses occasionally were uncertain around exact dates, the Panel found that dates could be checked against the records.

The Panel found no evidence of your stated position which appears to be there was a vendetta against you by II which came about because you had raised a grievance against her.

Your daughter, BB gave evidence on your behalf and in support of you. The Panel accepted that she was distressed about what had happened toyou and the ongoing SSSC investigation. In terms of the allegations, her evidence is limited because she did not

work with you and it is essentially hearsay. Her suggestions of a vendetta could not be substantiated.

The Panel had the documentary evidence in the bundle. As a way of background, the Panel heard from witnesses describing the Children Disabilities Team as dysfunctional and as being split into two camps for no readily apparent reason. There was bad feeling about permanent posts being filled by persons seen as outsiders and not being the preferred choice of those already in the team.

The documents and evidence of witnesses also record 2013 to 2014 as a time of significant change for the REDACTED Team and the services it was expected to deliver. The extent to which these changes proved to be a challenge, distraction or difficulty for you is not easy to ascertain and understand but certainly appears to have contributed to what appears to be a breakdown in the relationship with II the last of three managers to have been your line manager in the REDACTED Team.

Irrespective of (a) the many changes as just described, (b) the acute issues that rose with the G family around December 2014 leading to a child protection conference being convened in January 2015, (c) the grievance you raised against II of bullying and harassment, (d) the two subsequent investigations into your practice resulting ultimately in your dismissal from REDACTED it was clear from the witnesses' evidence and documents that there were long term and chronic failings in your practice which do not arise from the changes and challenges arising in 2013 to 2014. Similarly, the allegations of misconduct at 2.d., 2.e., 7.d., 7.h., 7.i. and 7.l. cannot be attributed to these challenges and changes.

It may be the case that the REDACTED investigations proceeded in an unusual or atypical way arising out of your grievance. However, in these two investigations into your practice there is no doubt that senior managers at REDACTED undertook detailed and thorough investigation and analysis into the case records for those service users or clients you were entrusted to care for. It is largely on the basis of those records and reports that the facts supporting the allegations are found.

You were employed as a Social Worker by REDACTED during the period between 23 June 2011 and 14 April 2015. You were employed in the REDACTED Team during that period.

In relation to each of the allegations the Panel found as follows:

1. All allegations were found proved. Where there is an alternative in the allegation saying there was a failure to record delete the alternative, exceptin 1.h. where the Panel finds it was a failure to record a response.

   Child A was a child with complex needs. He had cerebral palsy, epilepsy and was quadriplegic. The Presenter's submissions at pages 3 to 8 of Appendix 1 are referred to for the more specific detail as to where the evidence is found.

   There is evidence of many entries in case notes which are substantially cut and paste information from other Workers described by witnesses as "social work by e-mail and telephone".

   Significantly, there is no contact with this family between 19 July 2011 and 13 June 2012 despite, for example, the out of hours team going out and making a referral (F493) which you ought to have seen and actioned.
   There is also the inexplicable record made by yourself that the mother of A should refer herself to REDACTED Team when you in fact represented that team.

   There was a period when you were not dealing with or were not allocated the case, but following a fire in 21 April 2014 and a letter from a paediatrician (F451), you were allocated the case again by KK and again failed to fulfil your responsibilities as the allocated Social Worker.

2. All allegations were found proved. Where there is an alternative in the allegation saying there was a failure to record, delete the alternative. As far as allegation e. is concerned the Panel accepts the Presenter's submission that your actions in

allegation d. were dishonest.

Child B has a significant delay in his speech and language development. He was permanently placed with a foster family and had been subject to a Permanence Order since April 2009. The Presenter's submissions at pages 8 to 12 of Appendix 1 are referred to for the more specific detail as to where the evidence is found. There are therefore repeated failures to comply with the regulations. There is quite clearly a lack of engagement with this family.

3. All allegations were found proved. Where there is an alternative in the allegation saying there was a failure to record, delete the alternative.

Child C has a diagnosis of Asperger's Syndrome and was accommodated ina residential school in Derbyshire.

The Presenter's submissions at pages 12 to 15 of Appendix 1 are referredto for the more specific detail as to where the evidence is found.

There appear to be no SWIFT records to show the case was allocated in 24August 2012. The first SWIFT entry we have appears to be 19 October 2012 (F1267). So from case notes we cannot say what happened betweenthose dates. The investigations by FF (F329) and HH (F315) state the case was allocated at the August 2012 date.
The evidence from the witnesses is that the first contact with the family was the visit with the mother on 30 November 2012. On the basis of thewitness evidence and the content of the SWIFT entry, the Panel are satisfied that this was the first contact.

As stated in the Presenter's submissions, CC commented on the amount of e-mails from other Workers that appear to have been copied into the records. The description again is that this is social work by email and telephone.

4. This allegation is found proved subject to the deletion of the words "with the result that you were not aware the family were no longer receiving services".

The Panel has made the deletion as it is not possible, on the evidence to determine what you knew about the care package at the time.

Child D was diagnosed with Down's Syndrome and lived with his widowed father and siblings.
The Presenter's submissions at page 15 of Appendix 1 are referred to for the more specific detail as to where the evidence is found.

5. All allegations were found proved. Where there is an alternative in theallegation saying there was a failure to record, delete the alternative.

Child E is a child with autism and communication and sensory issues. He also has behavioural issues.

The Presenter's submissions at pages 15 to 17 of Appendix 1 are referred to for the more specific detail as to where the evidence is found.

6. All allegations were found proved. Where there is an alternative in the allegation saying there was a failure to record, delete the alternative.

As allegation 6.c. says, contact with Child F as opposed to the mother of Child F, the Panel considers the records disclose only "1 contact" so where two occurs amends to one.

Child F is a child diagnosed with Down's Syndrome.

The Presenter's submissions at pages 17 to 18 of Appendix 1 are referred to for the more specific detail as to where the evidence is found.

7. The Panel wishes to delete "during the course of that employment" as these words occurs in the preamble to all of the allegations.

The Panel does not find c.i. and ii. proved because of the contradiction contained in the minutes of 19 November 2014 and 4 December 2014 as to whether the Barnardo care was ongoing.

Thereafter, the Panel finds the remaining allegations proved. Where there is an alternative in the allegation saying there was a failure to record, delete the alternative.

Child G1 had significant learning difficulties and autistic traits.

Child G2 was assessed as having issues with her learning and development.

The Presenter's submissions at pages 18 to 22 of Appendix 1 are referred to for the more specific detail as to where the evidence is found

9. The Panel found this proved in the first alternative, therefore the second alternative is deleted.

The Presenter's submissions at page 22 of Appendix 1 are referred to for more specific detail as to where the evidence is found.

Child I was diagnosed with Autism.

10. The Panel found allegations proved in the first alternative therefore thesecond alternative is deleted.

Child J was diagnosed with Autism.

The Presenter's submissions at pages 22 to 23 of Appendix 1 are referred to for more specific detail as to where the evidence is found.

The Panel took into account the submissions submitted on your behalf at W3-W4.

The Panel took great care and a considerable amount of time to review all of the

documentation amounting to more than 2000 pages, and cross referenced the testimony of witnesses and your representations to ensure it had given full attention to the matters before it.

Impairment

The Panel, having dealt with the facts as narrated above, turned to deal with the issue of impairment of fitness to practise as set out in Rule 19. of the Rules.

The Presenter contended that your fitness to practise is impaired because of your misconduct as set out in allegations 2.d., 2.e., 3.d., 7.d, 7.h., 7.i. and 7.l.and because of your deficient professional practise as set out in the remaining allegations found proven by the Panel.

The Presenter did not lead further evidence at this stage but referred to whatwitnesses had said about your practice when giving evidence earlier in proceedings, as follows:

CC gave evidence that she would have "very significant concerns" about you continuing to work as a Social Worker. She confirmed that her investigation "covered a range of cases" and uncovered a "breadth of failings in practice" and "evident failings in each type of case". In particular, you "missed the wider issues". She found "no evidence (that you) considered risk factors". In addition, CC was of the view that you "failed to understand your role in a statutory team with statutory functions". "Time and time again", she found "lots of emails and correspondence from others recorded but it was difficult to see what you were doing". When asked if your practice was typical, she stated that she "would not expect (it to be) common practice" and added that "issues were not raised in relation to others (meaning other Workers in the team)". When asked if you were returning to work tomorrow, if there were any conditions that could make you safer,CC advised that she wasn't sure "what could be put in place because there were so many issues in your practice". When asked about re-training, CC highlighted that "oneof the major issues was that the Social Worker was not reflective in practice". CC explained that "children are very vulnerable but children with disabilities are even more vulnerable" and that Social Workers "need to be acutely aware of that…

observant and thoroughly investigating". She stated that she got "no sense of that through looking at the (your) cases."

II was asked if there were potential risks arising from your social work practice. Her answer was "absolutely". When asked if there were any conditions that could be put in place, she stated, "in all honesty, based on experience, no".

LL was asked if he had any comment on your social work practice based on the cases he took over. In response, he stated, "I repeatedly asked myself what she'd been doing". In particular, in relation to the G family, he was of the view that "there were risks to the children".

FF was of the view that there were "certainly risks to a number of children in terms of impact of care, wellbeing, safety and development". When asked if she would have any concerns about you continuing to work as a Social Worker, she was very clear. She stated, "Yes. I can't imagine what branch of social work she could practise in". She added that there was "no evidence she recognised these things (meaning risk, safety, wellbeing) in cases she did hold".When asked if there was any training that could be provided or conditions, she stated, "I think if imposing conditions, there would have to be very, very close and robust supervision." In relation to training, she could not suggest anything short of the "whole social work training course again".

GG was also asked if she would have any concerns about you continuing to work as a Social Worker. Her response was also extremely clear. She stated, "Yes. I feel the risk is too great. To summarise; the volume, breadth and depth (of concerns) was very, very concerning". In addition, GG added that she "didn't find acknowledgment of responsibility" or "ability or willingness to reflect". When asked further in relation to this, she stated that you "continued to deny and blamed a whole range of other people or processes". GG "didn't find evidence that (you) took responsibility or (demonstrated) remorse". When it was specifically put to GG that the test is impairment as at today's date and asked whether conditions would be appropriate, she explained that her view hadn't changed on that. Taking that further, she stated that, "there is no evidence that conditions would mitigate therisk to children and families and the

general public".

HH echoed the evidence of other witnesses in highlighting that children with disabilities "are a lot more vulnerable" and with "very specific vulnerabilities". When asked if she would have any concerns about you continuing to work as a Social Worker, she went the furthest and was most explicit in her response. She said, "Yes. I consider her practice to be dangerous". She added that you "don't either recognise or respond to risk. Shechooses which cases will get her attention and which won't". In HH view, "it was evident that she has shown no insight into impact" and "not reflected… which contradict core social work values and (demonstrate) a total lack of respect for the needs of vulnerable children and families". Crucially, HH highlighted three of your cases that she described as "almost textbook". In her view, that "actually makes this worse because it is not a Worker who didn't know or wasn't trained or wasn't supported" and "she did actually know how to work a case and do it the right way". HH was also asked if there were conditions that could be put in place for the purposes of safeguarding. HH responded: "I think she's failed to demonstrate insight into her practice" and "not been accountable". She added that it is "difficult (to say) what measure could protect service users when a Worker doesn't think there is anything wrong with practice". She confirmed she couldnot think of any conditions.

These witnesses were experienced Social Workers who gave their evidence clearly in a measured fashion. Some of the witnesses did not know you prior to the REDACTED investigations (HH GG and CC). LL worked with you and II was your line manager for a short period. The Panel had no reason to believe they were being anything other than truthful. As previously stated, the Panel found the witnesses to be credible and reliable.

Your daughter, BB told the Panel that you had a long and unblemished career in social work. However, the Panel noted that she had never worked alongside you.

In submissions submitted on your behalf, (W5–W6), it is stated that "the Worker's fitness to practise has not been impaired and there is clear evidence to say that the Worker has been dedicated to the care sector and would be a loss to the service" and "This is not a situation

where the Worker has acted in a way that would intentionally put the profession's reputation into disrepute" and "The Worker would have no reason to mislead any of her managers and she was very passionate about her codes of practise set out by the SSSC".

These statements are not supported by any evidence. The Panel finds it worthy of mention, and of concern, that throughout proceedings you have been unable to make any meaningful comment about the individual children and families you were allocated or responsible for. You have appeared to find it difficult to explore your own awareness and insight regarding your practice. Your reflection on any failures in practice appears to focus on factors out with your control and you appear to have struggled to reflect on your own personal responsibility for your cases or your practice and behaviours.

There is no definition of fitness to practise, deficient professional practise or misconduct in the Rules. In terms of Rule 2.1., a Worker is fit to practise if they meet the standards of character, conduct and competence for them to do the jobsafely and effectively with regard to the Codes in force at the relevant time. ThePanel is required to analyse the Codes and apply the relevant case law to determine whether impairment, on the grounds of deficient professional practise and misconduct, has been established.

In your case, the Panel was able to assess your conduct by reference to theCodes in force prior to November 2016.

The Panel was satisfied that your behaviour with regard to your practice, meansyou have failed to comply with Parts 1.2, 1.3, 1.5, 2.1, 2.2, 2.4, 2.5, 3.1, 3.8, 4.2, 4.3, 4.4, 5.1, 5.7, 5.8, 6.1, 6.2 and 6.5 of the Codes in force prior to 1 November 2016. The Panel recognises that breach of the Codes does not automatically amount to misconduct or deficient professional practise, that determination being a matter for the exercise of the judgement of the Panel.

The Panel paid particular attention to the guidance in the case of CHRE v NMC and Grant 2011 EWHC 927, referred to by the Presenter. The Panel noted that the question to be addressed was whether there is impairment as at the date of the hearing. The Panel recognised that in order to address that point, it would need to identify any steps taken by you to remedy your past conduct. The Panel also needed to form a view on whether the

behaviour complained of is likely to be repeated. Finally, the Panel had in mind the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so asto maintain public confidence in the profession and the SSSC as regulator.

The Panel also noted the guidance on the concept of "deficient professional performance" in the case of The Queen on the Application of Dr Malcolm NoelCalhaem v General Medical Council [2007] EWHC 2606 (Admin). The Panel noted that "[i]t connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work".

The Panel referred to the Decisions Guidance.

The Panel went on to consider both mitigating and aggravating factors.

Seriousness

The allegations 2.d., 2.e., 7.d., 7.h., 7.i., 7.j. and 7.l. said to amount misconduct, especially when taken cumulatively, constitute behaviour which falls far short of the standards expected of a Worker in the Child Disabilities Team.

Honesty and integrity are fundamental tenets of the social work profession. You sought deliberately to mislead your manager AA by claiming in supervision that you were seeing Child B monthly when there was no evidence of this. This was dishonest, which is incompatible with Registration with the SSSC.

You suggested that your manager observe a meeting and then, effectively, blindsided her in front of a family whom she had never met. This was extremely unprofessional and unfair. This particular allegation may have been considered less serious had it not been followed by a number of other instances of you simply not doing what your manager, II was telling you to do.

AA also reinforced that you should carry out the preparation and attend the ICPCC for the G children and you did not do so.

You refused to follow management instructions in this case. You were insubordinate and

this resulted in the family having to undergo the upheaval ofbeing allocated a new Social Worker, at what would already have been a stressful time.

A report done by that new Social Worker is unlikely to assist a case conference to the extent of that by a long term allocated Social Worker. Further, the failureto convene a case conference or refer the children to the Reporter placed the G children at unnecessary risk. You told the mother of the G children that PPU checks would not be completed when this was not true. You could have affected the mother's trust in social services, which could have caused her distress and confusion and may have prevented her from seeking help in the future.

You failed to follow management instructions and were insubordinate and placedthe children and mother at risk of significant harm.

As far as the allegations relating to deficient professional practise are concerned,in the remaining allegations competent, accurate and up-to-date recording of information is essential to the quality, delivery and safety of social services. The Panel considered that case recording is a core skill and requirement for a qualified Social Worker. On multiple occasions, for several service users, you failed to maintain accurate records and in so doing, placed those service users atrisk of harm. There is also no record of what work you did with various service users which affects future planning of care. This could lead to vital information being missed and decisions being made that are not necessarily in the service user's best interests.

It is also a fundamental part of a Social Worker's role that they fully investigateand assess any information received about the service users they work with which could impact upon the care of the service users, and take action where appropriate. You failed to fully investigate or take any action in relation to a number of concerning issues that were reported to you in a number of cases.
These issues could have been impacting upon the various parents' ability to carefor their children which left the children at risk of serious harm.

By failing to maintain regular contact with service users and their families, you could not

have been aware if the services that were in place were adequate to ensure that the children were receiving the care and support they needed. Thisdisadvantaged these children and, in some cases, placed children at risk of serious harm.

Failing to carry out prearranged visits or other commitments is a failure to treatservice users with respect and could lead to a loss of faith in social work which could place service users at risk of harm should they fail to seek help in future.

The Panel considers the seriousness and significant number of these allegationsamounting to breaches of 18 individual parts of the Codes, to be an aggravatingfactor.

Risk of repetition

It appears to the Panel that your failures to record information, failures to act and refusals to act, demonstrate a chronic pattern of behaviour by an experienced Worker over several years. These failures appeared to be across the majority of your case load. Such a concerning pattern of behaviour suggeststo the Panel a high likelihood of repetition.

The Panel considered you displayed limited insight into your failures, and thisalso increased the likelihood of repetition. It appeared to the Panel that your insight was limited to your perception of a poor working environment, a poorteam dynamic and a lack of management support resulting in your raising a grievance about bullying and harassment against your manager.

The Panel was persuaded however, that your managers carried out regular supervision and were available to assist with guidance. There was no evidence that you asked for additional support and ultimately you refused to engage with II in supervision. There was evidence that you had previously put yourself forward for a team manager post and the Panel concluded from thatyou must have considered yourself experienced and qualified enough to undertake that senior role. You gave no evidence as to how you would ensure the failings would not happen again. The Panel had an expectation that you would have been able to demonstrate that you had reflected on the failings displayed and what you had done to remedy them.

The Panel considered the risk of repetition to be an aggravating factor.Previous history

The Panel accepted that you had no previous history with the SSSC, which was afactor that could be seen as mitigating.

Circumstances leading up to the behaviour

The Panel considered that the evidence pointed to your behaviour being deliberate. The Panel has already noted that you were an experienced SocialWorker and there is evidence that there were three of your cases that were described by HH as being properly dealt with and textbook examples of good practice. Unfortunately, this was not the case with the remainder of your cases which are the basis of the allegations and where thefailings are widespread. There is no evidence that there were personal circumstances affecting your work at the time of the allegations and there is certainly no evidence that you raised any such issues with your managers.

Indeed, such was the lack of your engagement with the families you were entrusted to support, there is little or no evidence that you were aware of anyissues arising with the families. The degree of disregard for the Code in your behaviours is substantial.

All of these factors are aggravating.

Length of time since the behaviour and subsequent practice

You have not been in social work since your dismissal and have been subject to a Temporary Suspension Order (TSO) in the intervening period. This is a neutralfactor, therefore.

Conduct inside of work

For it to be considered aggravating that behaviour took place at work, it has tobe regarded as sufficiently serious. The Panel does consider this to be such a case where the deficient professional practise is so widespread and evident inthe

majority of your caseload that this is an aggravating feature.

Co-operation

The Panel accepts that you have co-operated with the SSSC investigation process and that you have submitted documents for consideration. Your daughter gave evidence. The difficulty is to determine how meaningful that co- operation has been where you have not put forward any comment or explanationfor the individual cases where your failures have been exposed. The Panel concludes this is a neutral factor.

Pattern of behaviour

As indicated earlier, the Panel considered your failures to record and failures to take action occur in several cases and over a number of years, specifically in thecases of the children mentioned below, demonstrated a pattern of behaviour.
The Panel considered this is a significantly aggravating factor given the extent ofthe period and range of service users.

Consequences of behaviour

The Panel was persuaded, on the evidence, that your behaviour had significantharmful consequences for some of the service users for whom you were the allocated Social Worker and lead professional. The Panel also considered therewas potential for significant harm in all of the cases because of your lack of engagement, lack of contact and apparent unwillingness to assess risk. The Panel noted evidence that you failed significantly to carry out your statutory function in terms of frequency of visits. Nine families were affected.

Some of the risk factors for potential harm for nine of the families were asfollows:

Child A who was significantly disabled – parents' history of alcohol and drugabuse, domestic abuse, criminality and his mother's poor mental health associated with historical sexual abuse were not addressed.

Child B – risk of emotional harm arising out of lack of emotional support.

Child C - who was accommodated in England - risk of emotional harm arising outof lack of contact, risk of physical harm arising out of his behaviours and the risks inherent in being placed far from home out with his normal support networks were not addressed.

Child D - risks arising out of lack of contact with, and support for, child'swidowed father.

Child E - risks arising out of failure to contact and support the distressed motherwho had stated she could not cope, failure to assess father's criminality and his coming out of prison. Child F – physical and emotional risks arising from mother's poor mental health,aggressive older sibling and your lack of contact and assessment.

Child G1 and G2 – physical, emotional and behavioural risks to children arising from your lack of observation of poor home conditions, capacity of mother to parent, investigation of mother's new partner and his relationship with the children, issues with G1 tube feeding and nutrition. This culminated in an ICPCCbeing convened and the children being removed from the mother. Your failures in this particular case were the catalyst for the first REDACTED investigation.

Child I – risk that family would not cope arising out of lack of adequate support including respite care, risk that Child I would harm his mother including failure to attend to a crisis phone call when his mother called to say she could not cope.

Child J - risk to mother and from mother when mother self-harmed where youfailed to carry out any assessment.

Witnesses gave powerful and compelling evidence about improvements in the circumstances of a number of the children when their cases were taken over byother Social Workers, for example, the G children are said to have thrived physically, emotionally and with much improved behaviour. Child F was removed from her mother's care on a Child Protection Order.

The Panel considered this to be an aggravating factor.Abuse
of trust
The Panel noted that you were the allocated Social Worker with lead responsibility for the care and protection of the afore mentioned service users.These service users were all children with disabilities, who by definition, are particularly vulnerable.

People who use services, their families, employers and the public, trust workersto provide an acceptable standard of care.

The Panel considered these to be aggravating factors.
Concealing wrongdoing
Clearly telling your manager, AA that you were seeing your clientmonthly when you were not, is an example of concealment and accordingly isaggravating.

Case for more serious action

The Panel went on to consider whether this was a case where more serious action might be required, in terms of section 10 of the Decisions Guidance, because of the overarching need to protect the public and the public interest, including upholding the reputation of the profession. The Panel concluded thatthis was a case where paragraphs 10.3 and 10.4 apply.
Dishonesty (10.3) is particularly serious because it may undermine trust in socialservices. The public who use services must be able to place complete reliance on the integrity of Workers. Dishonesty is so damaging to a Worker's suitability and to the public confidence in social services, that the most serious sanction may be the only outcome in certain cases.

Unacceptable level of care (10.4), this is a case where the Panel considers you have not acted in the best interests of the service users and you have provided asocial work service which falls well below the professional standard expected.
You have not shown any insight or taken remedial steps, and additionally, yourfailings are so serious and persistent, that action is needed to maintain public confidence.

Impairment

The Presenter's position was that the allegations amount to misconduct or todeficient professional practise and, individually and cumulatively, are seriousenough to require a finding of impairment of fitness to practise.

The Presenter highlighted the seriousness of the behaviour, multiple instances offailing to provide vulnerable children with an acceptable service by failing to visitand by failing to maintain records. She highlighted failures to respond to multiple potential child protection issues, where you repeatedly demonstrated that you were either unwilling or unable to carry out basic functions of your job. She contended the risk of repeating this behaviour, if you were to return to social work, is extremely high because you have shown no insight and expressedno remorse. You appear to have a deep-seated attitudinal issue and appear to be incapable of reflecting upon your behaviour. Given the number of failings and the number of other professionals who raised concerns about your practice in their evidence, if you were to return to practise, this would create real public protection and public interest risks.

The Presenter accepted that the Panel could make up its own mind about whatgrounds of impairment are established.

Your position appears not to address these issues, other than say you are a goodWorker who is not impaired.

Reasons for the Panel's Decision

In coming to a decision as to whether your fitness to practise is currently impaired, given what the Panel has said about the serious nature of the allegations and the high risk of repetition, the Panel was satisfied that there wasa risk of harm to service users and therefore a significant issue of public protection.

It is apparent to the Panel, that any reasonable person would have concerns about what the Panel viewed as very poor practice. The Panel accepted that such failings reflect remarkably badly on the profession and seriously undermine
the integrity of a profession whose primary role is to ensure safety andprotection of

vulnerable service users.

The Panel was not satisfied that you had taken any steps to remediate your behaviour. There are serious public protection and public interest issues given the range and extent of your failings. The Panel could not be satisfied that yourbehaviour would not be repeated. This would have a serious effect on service users and would adversely affect the integrity of the social services profession and the reputation of the SSSC as regulator.

It was the decision of the Panel that your fitness to practise is currently impairedas result of misconduct, in respect of allegations 2.d., 2.e., 7.d., 7.h., 7.i., 7.j. and 7.l., and is currently impaired as a result of deficient professional practise asregards the remaining allegations.

Sanction

The Panel heard from the Presenter and also took into account your submissionsat W7. The Presenter submitted the only appropriate sanction in this case was that you be removed from the Register, given the serious nature of the allegations and the findings of the Panel on impairment. You submitted the Panel could impose a warning or a warning and conditions.

The Panel decided to impose a Removal Order in relation to your Registration inthe part of the Register for Social Workers in terms of Rule 20.2.g.

Reasons for Decision on Sanction

The factors to be taken into account when considering sanction overlap to a substantial degree with those taken into account by the Panel when consideringimpairment.
The only mitigating factor the Panel could identify, is that you have no previousrecord with the SSSC. You have engaged with the SSSC. Due to the aggravating factors set out in the Panel's decision on impairment, particularly the serious nature of the allegations, the pattern of behaviour over such an extended period and number of cases, your abuse of your position of trust, the potential harm to and the harm caused to service users, the Panel considered this to be a case in which serious action is required as indicated in Section 10 of

the Decisions Guidance.

Your behaviour was very serious and constituted a pattern of premeditated anddeliberate acts with no concern for the possible consequences. It involved a significant breach of trust. You have demonstrated a lack of insight into the possible consequences of your actions. Your behaviour constitutes a serious departure from the professional standards set out in the Codes. It represents asustained pattern of unacceptable behaviour. There was no evidence of remediation.

There are serious public protection and public interest concerns. Your actions demonstrate a serious disregard for your duties and responsibilities as a socialservice worker. There would be a reasonable expectation on the part of the public that a sanction would be imposed given the finding of impairment. The Panel began with consideration of the least restrictive sanction. A warning on its own wouldnot address the seriousness of your deficient professional practise and misconduct, adequately protect members of the public or serve the wider publicinterest.

It was the view of the Panel that conditions, with or without a warning, are not appropriate as you have shown no insight or reflection. You have not taken anysuitable action to remediate your unacceptable behaviour. Given the nature andseriousness of your behaviour, the Panel was unable to formulate workable or enforceable conditions which would adequately protect members of the public and serve the wider public interest.

It was the view of the Panel that a Suspension Order, with or without conditions,is not appropriate given the seriousness of your deficient professional practise and misconduct. A suspension would serve no useful purpose and would not provide adequate public protection or adequately serve the public interest.

Social service workers who abuse the trust which society places in them should lose the privilege that comes with Registration. It was the view of the Panel thatyour pattern of behaviour renders you unfit to be a member of a caring and responsible profession. All of the factors set out in paragraph 13.2 of the Decisions Guidance under the heading "Removal" are present in this case.

Given the findings in fact, the pattern and extent of the behaviour, your lack of insight and lack of reflection, it was the view of the Panel that it is appropriate toimpose a Removal Order in relation to your Registration. The Panel was satisfiedthat the findings in relation to impairment are sufficiently serious as to affect your fitness to practise as a social service worker.

The Panel acknowledged that a Removal Order can have financial and reputational consequences for a Worker. It was the view of the Panel, that anysuch consequences for you are outweighed by the need to protect members of the public, to serve the wider public interest, to protect the integrity of the Register and the reputation of the SSSC as regulator. In all the circumstances,it is the view of the Panel that it was both fair and proportionate to impose a Removal Order.

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APPENDIX Two

Supplementary Submissions

in the appeal by

BE ,

PURSUER

SCOTTISH SOCIAL SERVICES COUNCIL, having their registered office at Compass House, 11 RiversideDrive, Dundee, DD1 4NY

DEFENDER

In response to The Regulation of Care (Scotland) Act 2001 (the Act) S43, s44, s45, s46(1), s50, s51 and s59.

The appellant has been on Employment Support Allowance since 2018 and is on severe disablement allowance since 2018 and this has currently been extended until 2024. The appellant has never made any averments that she was looking to return to the social work profession due to the actions of [Redacted] and the respondent. The [Redacted] and the respondent's actions and manifestly unfair processes have directly impacted on the appellant's mental health and rendered her as now being unable to work. The [Redacted] and respondent de-skilled the appellant and ran her down to a poor existence where she has frequently attempted to complete suicide due to their manifestly wrong doings. The appellant's mental health has never been considered throughout the now six years she has been subject to this manifestly unfair process. The respondent was fully aware of the first investigation by [Redacted] and at that time should have set out to start the process for a TSO. The first investigation was completed in September 2015 where the appellant was sanctioned with a final written warning short of dismissal. Instead, the respondent waited until the second investigation to be completed before starting the TSO process. The appellant would suggest that the respondent failed to act swiftly in arranging a TSO. This suggesting that the respondent either felt there was no imminent risk to the public as she continued to work with no warnings on her registration or they were being highly prejudice in their process. To date the appellant is still unclear who asked for a review of the appellant's cases to be carried out. Either way this was highly prejudice and would suggest either parties' were seeking to find fault. The appellant was never afforded the opportunity to safeguard her registration which she had only ever attempted to do since 2015. During the first TSO in February 2017 she was cut off by one of the participants of the TSO when she had been discussing highly sensitive and upsetting information. Not just because of this, this placed the appellant in a position where she did not trust the respondent and felt she was being under attack rather than being listened to and being treated with dignity, respect and fairness. The Sheriff will be able to see from medical notes that the appellant's illness is directly correlated to the processes she has been

subjected to over a six-year period in total. This is a matter that is highly concerning and manifestly wrong.

In response to Decisions Guidance for Fitness to Practise Panels and Scottish Social Service Council staff (production 2 for the Defender)

The respondents states “The Defender produced this guidance to help decision makers reach proportionate and fair decisions. It is designed to ensure that the decision making process is transparent and consistent, and to help those involved in the process understand how a decision will be reached”

The appellant would ask the sheriff to review email correspondence between SS now SOC and the respondent. 157- 160. Please read 160 first then 159 and so on (as it is back to front). The respondent when asked to justify their decisions or disproving allegations in regards to the submissions made by the appellant. The respondent advised pg157 “I am not in a position to do that. Your mother has been given fair notice of the allegations against her, as well as the documentary evidence that will be relied upon and a list of witnesses who will be called. Beyond that, the legal advice provided to the SSSC is confidential and privileged and therefore I cannot send it to you”. The appellant would question why the respondent took only four days to consider the appellants submissions in one hand but suggested that it was a complex case in the other hand. After taking 5 years to conclude their own investigations. So in effect the respondent took five years to review information but only gave four days to consider the appellants submissions. If the sheriff would please refer to Pages 117-152.

The appellant would suggest their decision-making process was not transparent or consistent and certainly left the appellant not understanding how they came to their decision. Even though, the appellant, respondent and panel used same bundle. Also the appellant had no fair notice of allegations against her as the respondent used cases that spanned from 2011 and didn’t notify her of these allegations until 2017. This is manifestly wrong.

The appellant would suggest that simply sending guidance doesn’t just mean a worker will understand what is going on. If subject to FTP more than likely they have had to deal with an emotional process and also have had to try and negotiate their way through other procedures too amongst complaints, seeking rep and so on. This is manifestly wrong. The appellant has found the process extremely traumatising. And would suggest that both the [Redacted] and the respondents are responsible for the appellant’s mental illness and would suggest that both did not provide a duty of care to the appellant. Please refer to case on John Green v Argyle and Bute Council and

Lord Bonomy's opinion

In response to Common law natural justice

The respondent states "As a statutory body the Defender has a common law obligation to adhere to the principles of natural justice. It must exercise its powers and its discretion in good faith, lawfully, reasonably, rationally and properly. It must not exceed or abuse its powers"

The appellant would suggest the respondent has failed to adhere to this obligation as per submissions provided to the court on behalf of the appellant. The appellant would suggest that the respondent did indeed exceed and abuse its powers by the process in which the appellant was subjected to. The appellant would suggest that the process that is in place was difficult for any lay person or lawyer to navigate its way through. Processes that the respondent put in place which would disallow any lay person to be able to access appropriate representation from professionals who are able to fully understand that process. This can be evidenced by the lack of lawyers who would be able to take on the case due to it being a specialist area of law. Also the fact that only now the respondent have came to recognise this and it is evident from the outcome of consultation on introduction of Opt-in hearings: analysis of responses whereby the SSSC recognise one of the main reasons being "lack of support to help them engage with us". Also it is noted within this consultation that the process is complicated. This being manifestly wrong not only for the appellant but for anyone being subjected to this unreasonable, unlawful, unreasonable, irrational and improper process. Rendering the appellant helpless and unable to gain the correct support at the correct times.

The respondent states "A Fitness to Practise Panel must not misdirect itself in law. It must reach a fair and rational conclusion. It must have adequate material to support the conclusion. It must not give improper weight to immaterial facts. It must not make perverse or irrational findings on matters material to the outcome. It must base its decision upon evidence that has probative value. It must have a sufficiency of evidence of a reasonable weight for its decision. Its decision must not be perverse

of disproportionate. Its reasons must be adequate and properly articulated. Its decision must leave the Pursuer in no real and substantial doubt as to what the reasons for the decision were and what material considerations had been taken into account in reaching it. The Panel's decisions ought to set out its reasoning as to how it resolved important controversial issues"

In response to the above this has never been done by the respondent. Please refer to 67-95 and 117-152 (submissions by appellant) also the respondent's submissions. The appellant to this date is still very unclear why [Redacted] the respondent, the panel and the appellant came to very different conclusions yet using the same information. The respondent has never resolved any controversial issues and this is why the appellant has had to appeal her case through Dundee Sheriff Court.

Findings in fact and credibility and reliability of witnesses

The respondent states "Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position."
The appellant would suggest the respondent and panel could not have weighed their evidence as they failed to postpone the hearing to allow the appellant to gain part representations at least. And to have a fair and unprejudiced hearing by doing so the appellant was unable to bring in to question the credibility, honesty of witnesses and evidence. The appellant would suggest that the Sherriff Court in this event would have been more likely correct in any decision compared to that of the respondent. Albeit the appellant understands the explanation previously provided at the hearing 22nd of June 2021. The appellant is unclear why the respondent is directing the court in regards to the approach the court should take in regards to the appeal.

Sanction

The respondent states “Accordingly, the appeal court should not interfere with the decision of a professional conduct committee if it comes to the view that another disposal might in the circumstances have been preferable, or that, given a free hand, it would have imposed a different penalty. It is well settled that the appropriate test which must be applied in an appeal of this kind if the disposal is to be set aside is that the penalty imposed can properly be described as excessive and disproportionate in all the circumstances of the case.”

The respondent states “The court can interfere if it is clear that there is a serious flaw in the process or the reasoning, for example where a material factor has not been considered”

In response to the above the appellant’s daughter (lay person) also a social worker, subject to registration, had worked for [Redacted] and was witness to the whole process from start until date. The appellant’s daughter is route cause analysis trained and is able to forensically examine information that was provided for the appellant’s case. She could also speak to the collusion, manipulation of information, and bullying tactics and lack of evidence used and the failures of [Redacted] and the respondent. The appellant would suggest that had the Sherriff Court or any other person independent of the respondent or the [Redacted] would have most certainly came to the same conclusion as the appellant. That the sanctions were excessive and disproportionate in all circumstances of the case. Therefore, the appellant would suggest that the court could interfere as there would appear to be a serious flaw in the process and reasoning and the process which is the material factor which has not been considered. Again, the respondent has since changed process in regards to the fitness to practice which would evidence the flaws in the previous process.

The grounds of appeal

Responses to each area identified by the respondent:

A. The respondents didn't provide the appellant with a fair and just hearing

B. The respondent took 5 years but used cases from 2011 onwards

C. The appellant was unable to get Law clinic to take over to call witnesses due to refusal to postpone by the respondent.

D. The appellant unclear why appellant, respondent and [Redacted] came to very different conclusion using same evidence

E. The appellant had clean record until she raised a complaint in regards to bullying and harassment of her line manager, the appellant had been registered as a social worker since 1995and had worked within social care since 1979 without incident and was a highly respected individual in her field. The respondent was aware that the appellant had been subjected to this since 2015 and had never made any averment that she would go back to social work due towhat [Redacted] and SSSC had done to her). The appellant's sanction of removal was highly disproportionate and had the evidence been properly considered the panel would never been able to come to this conclusion.

Failure to postpone the hearing / proceeding in the absence of the Pursuer

The appellant reports that Legal aid does not cover the respondent's final hearing and due to her being dismissed from employment she was unable to be able to afford representation. Therefore, again the respondents' processes being unfair due to the appellant being unable to source representation. Again, making the process prejudice and discriminatory against someone who is less financially better off. Also pushing that person to have to try and use a service which is not open all year ie the law clinic.

The respondent reports that "The Pursuer has suggested at various points in her averments that her inability to access legal aid rendered the process unfair in itself. The Defender disputes this. The Defender of course has no power over who is eligible for legal aid and who is not. This is a public policy matter. There are many different types of legal proceedings for which legal aid is not available. This does not make those proceedings unfair"

The appellant advises that Vulnerable witnesses can have access to representation from the respondent amongst others including individuals that have been allegedly

involved in sexual offences. The appellant can not understand why representation could not have been provided in her case. After all the appellant has paid her registration for a number of years and would have thought she would have been provided with at least some assistance. This shows that the respondent has failed the appellant by not protecting her registration and has led on to her losing her registration. It would have been thought the respondents would also have a duty of care to all those subject to registration not just to the minority. This implying that the respondent favours some on the register rather than all on the register. Again being unfair and having a process which is manifestly wrong. The law clinic use student volunteers and close during term time.

The respondent states “A further postponement request was submitted in writing on behalf of the Pursuer at the outset of the hearing (Production 3 for the Defender, part 15, page 97 marked as “Page 1”). This also suggested that the Law Clinic may have been able to provide part representation, but again provided no evidence to support this assertion. This postponement request was considered by the Panel when making their decision to proceed in the absence of the worker, as outlined in the Notice of Decision (Pages 8-9 of Production 5 for the Defender). The decision to proceed in the absence of the worker was reasonable in the circumstances and in line with both the Rules and the caselaw in this area”

In regards to the above the appellant would request that the Sheriff reads the submissions provided by the appellant. Pg8, Pg9, Pg 22 and Page 23. The respondent was fully aware that the appellant was trying to gain representation from the law clinic.

At the CMM the respondent are made aware that we would attempt to get the law clinic to represent the appellant. Pg 8 notes Nov 19 “after discussion with law clinic to advise that SS had done most of the preparation for the forthcoming hearing. They agreed that they could provide some assistance for the hearing but would need time to prepare. Pg 9 notes submissions from the law clinic and evidences 15/11/19 “MD called SS to discuss case. MD talked to BB for 40mins”. 29/11/20“Student advisors KR and MD contacted client”. Pg 22 letter from law clinic to BD 02/12/19 “We write further to our phone call on 29th of November 2019. Please find attached mandate which authorises us to liaise with your legal aid solicitor JJ Also please see 357 -358 from JJ to SS. The law Clinic go off on holidays as they are students hence the gap in contact between December and

January. On the 8th of January SS advises the law clinic they had been refused a postponement. They again contact SS on 28th of January and SS advises the hearing had went ahead.

The respondent is correct in saying that the law clinic had refused representation on 15/11/2019. However the appellant had managed to gain part assistance thereafter so the respondent is being factually inaccurate and this brings in to question again the respondent's previous investigations.

The respondent states that "If the absence of the defendant is attributable to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant is represented and asks that the trial should begin"

In regards to the above the appellant would argue that had the appellant been represented then it would have been likely she would have felt confident in the hearing beginning. She would have likely participated via video link and with support. The respondent failed to allow this. Had the appellant not been subject to manifestly wrong doings and process by [Redacted] and the respondent then she would more than likely not have become so ill and may have been more able to participate with support. And had the respondent not made the initial TSO in February 2017 so traumatic for the appellant then circumstances would more likely have not been the same. This is the reason why the appealnt had asked for the recording of the TSO in Feb 2017. The TSO that the appellant was subjected to was a far cry away from that which is published on the Respondents website. The appellant recalled being led to believe

that her own submissions at the time would not have really mattered as it was a prima facia. This would suggest that the respondent even at that time had been prejudice towards the appellant.

The respondent states that "There was no evidence at any stage to suggest the worker was close to obtaining representation or part representation, and indeed the Pursuer's productions in the current cause show that this was not the case. As such, there was and is nothing to suggest that an adjournment would have led to the Pursuer taking part in the hearing or being represented"

The appellant has answered to this above.

The Respondent states that the appelant had the benefit of legal representation prior to the hearing, and prepared lengthy written submissions which were considered by

the Panel. As such, whilst absent, she was still able to give her account of events, which the Panel ensured was put to the witnesses. This maintained the fairness of the hearing.

The appellant would suggest this was not fair. The appellant to date is still not privy to this information and could not give her account of events and to date the SSSC has never took any statement from the appellant in regards to the situation, this is manifestly wrong. Again being highly prejudice in their approach.

The respondent reports that “The allegations against the Pursuer were very serious, as evidenced by the eventual decision to remove her from the Register”.

The appellant suggests that the allegations were answered to on both occasions for TSO in Feb 17 67-95 using the limited information the respondent held at that time also again the allegations were answered to for final hearing 117-152) and had they been considered appropriately and had appellant been granted a postponement to gain part representation then removal would and could not have been the sanction)

The respondent states that “An adjournment is not simply there for the asking. While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing.”

The appellant advises that the appellant is well aware that an adjournment is not simply there for the asking. But the appellant questions this averment as in effect the respondent allowed their investigation to be ongoing for around five years. The appellant tried every effort to gain representation and had contacted numerous lawyers across Scotland to gain representation but this was to no avail as the respondent advised this is a policy matter. When the appellant was refused initially from the law clinic the appellant managed to get the law clinic to offer part representation but this was to no avail due to the refusal of postponement by the respondent. Had the appellant not been subjected to 5 years of processes and defamation of her good character by the [Redacted] and SSSC she would more than likely not have been oppressed and not ended up so ill and unable to participate fully in the process. Had the appellant been afforded the opportunity of a fair hearing with at least some rep then she may have felt more able to participate. Otherwise she would have been like a lamb to the slaughter as the appellant

did not invite witnesses that the appellant had requested to ensure the hearing was objective in any way and did not include any employees that worked directly with the appellant. The respondent gave information to say why witnesses were not called and they suggested due to them not being registered with the SSSC. This does not take away from the fact that they actually worked alongside the appellant and would have been able to give a real picture of what actually went on as they both worked on cases. Had the respondent not allowed the process to take five years then both would still have been registered. It is unclear why the respondent would suggest they would not have any real input in regards to evidence when they used senior managers who never worked directly with the appellant and used nothing but hear say evidence and both [Redacted] and respondent were allowed five years to be an author of this horrendous story. Again extremely prejudice in its approach and manifestly wrong. There is also the question of passage of time as the respondent allowed cases to be looked at as far back as 2011 and brought them to a final hearing in 2020.

B. The length of time the investigation process took

The respondent states that “Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further, since the convention is directed not to departures from the ideal but to infringements of basic human rights”

The appellant would advise that this is of real concern and is manifestly wrong and more than infringes on the appellant’s human rights. Had this been a criminal investigation there would more than certainly be a time bar. The respondent failed to act swiftly back in 2015 and it is the respondents own doing that this period of time that had been allowed directly impacting on the appellants right to live her own life free from such an infringement that can only be described as utter torture.

The respondent states that the court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any appellate hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable.

The appellant would advise that this length of time is indeed unacceptable and indeed

excessive. 2015- 2020. The respondent had in their powers to ensure any witnesses would have to comply with an investigation but failed to do so. Again, they also used cases from 2011. The passage of time totalling a period of nine years is manifestly wrong. The respondent failed to carry out an investigation in regards to the employees of REDACTED in regards to complying with SSSC codes of practice and sending information to the SSSC. Had the respondent acted correctly in their own process this could have been avoided. The appellant would suggest that it was [Redacted] and the respondent who made the case far more complex than it had to be, had the respondent acted from the first contact made with the respondent in 2015 and carried out their own investigations not using the investigations of [Redacted]

The respondent states 54. The second matter to which the court has routinely paid regard is the conduct of the defendant. In almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by making spurious applications and challenges, changing legal advisers, absenting himself, exploiting procedural technicalities, and so on. A defendant cannot properly complain of delay of which he is the author. But procedural time-wasting on his part does not entitle the prosecuting authorities themselves to waste time unnecessarily and excessively.

The appellant states this has never been the case the appellant has only ever wanted the truth to come out and has only ever met with the panel on one occasion whereby she stated had she known she had done anything wrong she would have held her hands up to it at TSO Feb 17. The appellant would suggest that the Respondent was the author of the delays and allowed [Redacted] to exploit procedural technicalities. Even though they had powers within the registration to avoid this happening.

The respondent reports “It is also submitted that the vast majority of delay in this case was as a result of awaiting information being provided by REDACTED
This is out with the Defender’s control, and bearing in mind the Defender’s statutory duties to promote high standards of conduct and practice among social service workers, and to ensure that the safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced, the Defender had no option but to continue the investigation into these extremely serious allegations notwithstanding these delays”

The appellant would advise the respondent failed to act in 2015 to collate information and instead waited until [Redacted] had carried out two separate investigations. The respondent continually asked for information and was drip fed information by [Redacted]

The respondent could have used their codes of practice to ensure information was provided by [Redacted] and its employees swiftly but the respondent failed to do so. The respondent failed to put in place a TSO at the earliest opportunity which should have been after the outcome of the first disciplinary where the appellant was made subject to a final written warning short of dismissal in Sep 15. They allowed the appellant to continue working at this time even though now saying she was a risk to the public at large.

The respondent states that "The Pursuer has not made any specific averments to the extent that the passage of time prejudiced her defence of the case in any way. It is submitted that there is no evidence that had it been possible to hold the hearing at an earlier stage that the Pursuer's defence would have been any different"

The appellant did not volunteer her absence she was unable to attend due to her inability to cope with the hearing. The [Redacted] and SSSC processes had then impacted on the appellant's mental health rendering her incapable to take part due to their wrong doings. The appellant would ask the sheriff to review the appellant's medical records where there is a direct link between the appellant's mental health and the actions of [Redacted] and the respondent. The appellant would suggest had the respondent carried out their own investigation in 2015 at the point the appellant referred herself then the appellant would more than likely been more able to deal with the process. The appellant would suggest that Withey v HM advocate high court that abuse of process was a form of oppression. The appellant has been subject to this process from Jan 2015 until present date and had the respondent started their investigations at that time we would never find ourselves in this situation and had the appellant been treated with dignity and respect at the first TSO she would have felt more able to attend subsequent meetings. And in the case of the appellants case we would suggest that the delay had prejudiced the appellant receiving a fair hearing as the respondent used cases as far back as 2011 -2015. The appellant would suggest that since cases went back to 2011 and the process started in 2015 and didn't go to final hearing until 2020 the respondent should be criticised in ECHR terms. Either way this has either been a period of a maximum of

ten years and minimal amount five years. Had this been a criminal case including individuals that are a risk of serious harm they would have been time barred and not been subject to at least five years of oppression. Had the respondent believed and really believed the appellant to be a risk of serious harm to the public and a public protection issue why did the respondent not start the TSO in 2015. This is manifestly wrong.

The appellant would suggest that because of this then the respondent and [Redacted] has been disproportionate in their sanctions and failed to protect the public or service uses from harm from as far back as 2011. And had this allegedly been the case why did the respondent not investigate why the appellants alleged wrong doings had went unseen for all the years and why did the respondent not investigate the [Redacted] employees as this would suggest they had breached numerous codes of practice. But the respondent allowed the appellant to continue registering every year since then until her TSO in 2017. The appellant would also suggest that as the appellant had never indicated that she was going back to the social work profession nor had she indicated any reason for leaving Scotland, the respondent was manifestly disproportionate in putting in place a European alert. What is even more manifestly wrong is why the respondent used cases from 2011 and suggesting that the appellant should have known that she was doing wrong under the guidance prior to 2013. When the guidance only came out in 2013 and then this became outdated and no longer in effect when the FTP came out in 2016. Therefore due to rules being changed prior to 2013 date unknown, then again in 2013 and then again in 2016 by the new FTP and again amended in 2017.

The appellant could not have predicted the future in regards to the respondents rules but still had not at any time was she aware she was doing any wrong in 2011 but the respondent used 2016 FTP rules even though the case would have included rules from 2013 and also rules prior to that. This would be like giving someone a conviction for driving under the influence prior to legislation coming out in 1988 say in 1978 when the legislation had not been in force. This would be manifestly wrong and is wrong to allow the respondent to do this to the appellant. Also please note having no performance management or being subject to any investigations from 1977 until she raised a concern about her manager of three months whom the respondent failed to investigate appropriately alongside others.

The respondent states that they were under no obligation to call either DD or EE as witnesses. If they had been called, there is nothing in the Pursuer's averments to suggest that they would have had any material difference on the outcome of the hearing. Their statements were before the Panel, who admitted them as late papers. The Panel notes at page 15 of the Notice of Decision (Production 5 for the Defender) that it "took great care and a considerable amount of time to review all of the documentation amounting to more than 2000 pages". This would therefore include these statements.

The appellant is still not clear why the appellant and respondent came up

with two very different conclusions using the same evidence. Also advise that the appellant also took great care and considerable time in reviewing that same information amounting to more than 2000 pages and had to also navigate there way through a process that is complicated and manifestly wrong. Panel's consideration of witness evidence, including that of the Pursuer's daughter, BB

The respondent states that the "defender submits that the approach taken by the Panel towards the witnesses' evidence was both correct and reasonable. BB evidence is transcribed in Production 4h for the Defender. It is for the most part a hearsay account of what the Pursuer and others had told her about REDACTED disciplinary process, including unsubstantiated allegations of collusion among witnesses and falsification of evidence. She gave little to no direct evidence in relation to the specific allegations that were made against the Pursuer"

The appellant's response is that the appellant's daughter had first hand evidence of what [Redacted] had done and its employees and what the respondent had done, the appellant would suggest that the respondent did not want this information to be considered as the respondent would have to take in to account their failings in process and the way in which they dealt with the appellant. SS witnessed it first-hand all of it and both the appellant and daughter are still confused as to how both parties came to the outcomes and sanctions they did. Again suggesting that the respondent had been prejudice and used statements and witnesses accounts that should have been inadmissible and were actually hear say accounts.

- Seriousness

The appellant would suggest that without fully knowing what is classed as being serious and without fully understanding the allegations which were all answered to would question what is serious in nature to the respondent.

- Risk of repetition

The appellant would suggest there was no risk of repetition as the appellant was no longer able to work.

- Previous history

The appellant would suggest there was no previous history and issues only arised after the appellant reported her line manager for bullying and harassing.

- Circumstances leading up to the behaviour

The appellant would suggest that the cases spanned from 2011-2015. There were no circumstances leading up to the alleged behaviour. The respondent allowed cases to be reviewed prior to the issues the appellant raised against her line manager.

- Length of time since the behaviour and subsequent practice

The appellant would suggest that he respondent and [Redacted] used cases retrospectively from cases 2011- 2015. She continued to work until her final dismissal in 2016 without any issue)

- Conduct inside of work

The appellant would suggest there had never been any issue nor had the appellant ever been made subject to any performance management nor disciplinary until issues started with the appellants line
manager. The appellant never had any complaints from any of her clients. The appellant has never been charged or convicted of any crime.

- Co-operation with the SSSC

The appellant has co-operated with the respondent to the best of her ability. The process in which the respondent had in place made it impossible for her to fully co-operate. The appellant lived in Ayrshire was living on benefits and could not stay through in Dundee for a period of three weeks nor could her daughter who has a three year old and has work responsibilities.

- Pattern of behaviour

The appellant advises there was no pattern of behaviour had the respondent and panel considered properly the submissions and answers to each allegation made

- Consequences of behaviour

The appellant would advise there were no SIR's and there had been no consequences known from 2011- 2015.

- Abuse of trust

The appellant would suggest there was no abuse of trust

- Concealing wrongdoing

The appellant would suggest there was no concealing of wrongdoing

- Case for more serious action

The appellant would suggest as there was no room for more serious action due to removal the respondent therefore did not use the lease restrictive measure.

In conclusion

The appellant has suffered financial hardship and suffered excessive trauma due to the processes by the respondent and [Redacted] This has been for an excessive period of now six years. The appellant asks the court to consider this case and to find the processes and actions by the respondent to be seen as manifestly wrong. The respondent has infringed upon nearly all of the appellants basic human rights. The respondent failed to act accordingly and went against all their obligations as a statutory body and failed to adhere to the principles of natural justice. They did not exercise their powers and its discretion in good faith, lawfully, reasonably, rationally and properly. They did exceed and abuse its powers. Which is manifestly wrong.

The appellant would advise that the definition of a process is “A serious of actions or steps taken in order to achieve a particular end”

In early 2015 the respondent made it the responsibility of both the worker and the employer to notify the respondent if they were subject to any disciplinary action. The appellant in order to keep in line with her registration made the respondent aware that she was subject to disciplinary action. Therefore, the appellant was the first person to act in this process. At this point the appellant should have been provided with a case manager but instead her case sat in limbo. At the first point of contact with the respondent they should have taken action. Instead, the appellants case sat in limbo and it was not until the appellant again contacted the respondent to advise the [Redacted] were taken her down a further disciplinary action that it came to light that she had not been allocated a case worker. Again, the respondent failed to act on this choosing to wait until this investigation was completed, again failing to act or take any action to be more objective. The respondent did recognise this via a complaint response. The respondent at that time should have started their own investigations in to the allegations which would have been objective and

unprejudiced. But decided to wait until the [Redacted] had completed both investigations. The respondent in doing so could not bring the appellant to a TSO until Feb 2017 and even at that point as they had waited still didn't have all evidence to hand. The respondent even at the last CMM did not have all the information and the appellant's lay rep had asked for it to be recorded that they did not have full evidence. By the respondent failing to act swiftly at the first point of contact the appellant made with the respondent in 2015 and failing to use its own powers under the SSSC registration could have avoided the almost six year process that the appellant had to endure. The appellant would suggest that had the respondent carried out its own investigations from the start of said process in 2015 then I would suggest they would never had to carry out a three week hearing. The respondent also had to keep on at the [Redacted] for them to submit a referral for the appellant and failed to use their powers under the SSSC registration. The appellant had kept in line with her responsibilities but only to her detriment. The appellant would suggest that they whole process from start to finish was manifestly wrong and was highly prejudice, disproportionate and deliberately complex for any lay person to deal with. Not to mention the European Alert that not even the court nor the SSSC know how to navigate around.

I would ask the Sheriff to uphold the appeal as it is believe the appellant has been made subject to a process which is manifestly wrong.

END

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