



Neutral Citation Number: [2024] EWHC 1862 (Admin)

Case No: AC-2023-LON-003385

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/07/2024

**Before :**

**MR JUSTICE SWEETING**

**Between :**

**AB**  
**- and -**  
**SOCIAL WORK ENGLAND**

**Applicant**  
**Respondent**

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**AB** (representing themselves) for the **APPLICANT**  
**Michael Standing** (instructed by **BATES WELLS & BRAITHWAITE LONDON LLP**) for  
the **RESPONDENT**

Hearing dates: 9th July 2024  
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**Approved Judgment**

This judgment was handed down remotely at 14.00pm on 19<sup>th</sup> July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MR JUSTICE SWEETING**

## **THE HONOURABLE MR JUSTICE SWEETING :**

### **Introduction**

1. The Children and Social Work Act 2017 (the 2017 Act) established Social Work England (SWE) as the official regulatory body for social workers. The 2017 Act identifies public protection as SWE's primary objective. SWE has set professional standards which social workers are expected to meet (see Social Work England Professional Standards 2.2, 2.6, and 3.1 published in July 2019).
2. SWE's operational powers include a duty to take action to safeguard the public from unfit social workers. The specific regulations governing SWE's powers and the procedures for handling fitness to practise concerns are codified in the Social Workers Regulations 2018 ("the Regulations"). Under paragraph 12(3)(b) of Schedule 2 to the Regulations, SWE's adjudicators can make a final order where they determine a social workers whose fitness to practise is impaired.
3. Paragraph 13 (1) of Schedule 2 to the Regulations makes provision as to which final orders can be imposed. These are:
  - a. Removal Order: Complete disqualification from practising social work.
  - b. Suspension: Temporary ban from practising social work.
  - c. Condition of Practice: Restrictions placed on a social worker's ability to practise, potentially requiring supervision or retraining.
  - d. Warning: A formal reprimand.
4. The Appellant appeals against the decision of a Panel of SWE Adjudicators who, after a fourteen-day hearing, found her fitness to practise to be impaired due to misconduct. The sanction imposed by the Panel was to remove the Appellant from the register of social workers. The Panel revoked an interim suspension order previously imposed under paragraph 11(1)(a) of Schedule 2 of the Regulations and imposed a new interim suspension order. I indicated what my judgment on the appeal was and gave short reasons on the day of the hearing with judgment in writing to follow.

### **Background**

5. The Appellant worked as a social worker for the Children and Young People's Service at Greenwich Council from June 2010 to March 2019. She later worked as an Unaccompanied Asylum-Seeking Children's Social Worker at Kent County Council from August to September 2020, and as a Children's Social Worker at Surrey County Council from November 2020 to March 2021. She has been a social worker for more than 20 years and prior to the present complaints and findings had an unblemished record.
6. A final order of the adjudicators is appealable to the High Court, pursuant to paragraph 16(1)(a)(iii) of Schedule 2 to the Regulations. Whether by way of review or rehearing (without evidence) the central question on appeal in a case of this sort is whether the decision of the Panel was:- (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings. In relation to findings of fact the appeal court should take into account that the Panel saw and heard the witnesses giving evidence and should accord due deference to the expertise of the Panel in relation to social work

and its informed assessment of the standards to be expected of social workers and the impact of misconduct on public confidence.

7. On appeal, the court may:

- a) dismiss the appeal,
- b) quash the decision,
- c) substitute for the decision appealed against any other decision that the adjudicators or the regulator (as the case may be) could have made,
- d) remit the case to the regulator to dispose of in accordance with the directions of the court,
- e) and may make any order as to costs as it thinks fit

8. The allegations before the adjudicators were:

*“1. In or around July 2017 you did not communicate appropriately with a social worker who was allocated to work with you/your family*

*2. On one or more occasions you dealt with service user information inappropriately, namely by:-*

*a. In or around September 2020, retaining a safeguarding alert relating to Service User A (a service user you had worked with at Kent County Council), in circumstances where you did not have written consent to do so from the Council and/or the service user*

*b. On or around 5 October 2020, disclosing the safeguarding alert referred to at 2a. above without consent;*

*c. On or around 20 September 2020, accessing Child X’s records without a legitimate and/or professional reason to do so*

*d. In or around March 2021, retaining one or more records and/or case notes relating to service users you had worked with at Surrey County Council, when you did not have permission to do so*

*3. While working as a social worker for Surrey County Council, you provided inaccurate and/or misleading information with respect to one or more child protection visits in that you:-*

*a. recorded information on the Council’s systems on one or more occasions in February and/or March 2021, suggesting that a home visit to Family B and/or Family E had taken place, when that was not the case;*

*b. on or around 10 March 2021, informed your manager that a visit to Family B on 9 March 2021 was not a virtual visit, which was untrue*

*4. While working as a social worker for Surrey County Council, you failed to ensure that one or more service users were appropriately safeguarded, in that you:-*

*a. on one or more occasion in February and/or March 2021, did not complete child protection visits in respect of Family B and/or Family E as required*

*b. failed to escalate to your manager that you had not seen Child E for more than 10 working days due to a lack of parental engagement*

*5. Your actions as set out at paragraph 3(a) and/or 3(b) were dishonest.”*

9. The Panel found these allegations to be proved and gave a detailed decision setting out its reasons. It did not find that the Appellant’s fitness to practise was impaired as a result of the misconduct in Allegation 1 but did find current impairment in relation to misconduct on all of the other allegations.

### **Allegations 3,4 and 5**

10. At the hearing before me SWE contended that the Panel's final decision was one that was open to it on the evidence but acknowledged that the reasoning given in respect of Allegations 3 to 5 was not adequately detailed, particularly in relation to the evaluation of hearsay evidence. SWE conceded that this could be regarded as a significant procedural error in relation to serious allegations, which led to findings of dishonesty, and so warranted the quashing of the decision on these allegations. Additionally, the Appellant has acquired new evidence that, it is said by her, contradicts the hearsay evidence relied on by SWE at the Panel hearing.
11. Accordingly, SWE invited the court to quash the findings made by the Panel in respect of Allegations 3, 4 and 5 as well as the decision to remove the Appellant's name from the register of social workers and the finding that her fitness to practise is currently impaired. Although the Appellant developed her substantive arguments at the hearing in relation to Allegations 3,4 and 5 much of the argument revolved around the consequences of the concession made by SWE and in particular whether the conceded allegations should be remitted to a differently constituted Panel for redetermination.
12. Notwithstanding that the Appellant sought to impugn the decision on grounds which were wider than the concession made by SWE, I conclude that the appropriate course is to send these allegations back in their entirety, not least because many of the Appellant's points are in truth disagreements with factual findings. There would be little purpose in seeking to determine all of the matters raised given that the allegations will be considered afresh by a different Panel and that the Appellant intends to rely on further evidence which may contradict the factual case advanced by SWE. Although these allegations date back to 2021 they relate to matters of fundamental concern in relation to the Appellant's competence and probity as a social worker. There will need to be a case management conference to deal with additional evidence and the arrangements for a further hearing. That should take place as soon as possible with a view to a substantive hearing in the autumn.

### **Allegation 1 - Inappropriate Communication with a Colleague**

13. The first allegation relates to the Appellant's communication with a colleague, Ms. Higgins. Ms. Higgins was assigned to the Appellant's family after an allegation of sexual abuse (by her) against her former husband and father of their son. The Appellant was therefore herself a "Service User" within the social work system. The Panel determined that even though her communication with Ms. Higgins occurred outside her professional role, professional standards of conduct still applied.
14. The Panel concluded that the Appellant's email communication constituted misconduct by reason of:
  - a. A high volume of emails (29 in 9 days).
  - b. An inappropriate and disrespectful tone.
  - c. The presence of threats within the emails.
  - d. Unsubstantiated serious allegations against Ms. Higgins, including racism and corruption.
15. The Panel acknowledged that the Appellant had mental health issues at the relevant time and noted the emotionally charged context but determined that this did not excuse

unprofessional communication. The medical evidence presented did not establish a causal link between the Appellant's mental health and her behaviour.

16. In her submissions to me, the Appellant pointed out that the Panel had based its decisions on only 7 emails which she regarded as private communications, asserting that they were privileged. However, no question of legal privilege can arise in these circumstances and Ms Higgins was certainly entitled to draw the e-mail communication (which in event formed part of her professional records) to the attention of her employers when the tone and content of the emails became unprofessional and abusive. The right to freedom of expression and privacy upon which the Appellant also relied are qualified rights. The Panel was entitled to conclude that the fact that the Appellant sent the emails from her personal account and not in her capacity as a social worker did not relieve her of her professional obligations to comply with appropriate standards in dealing with colleagues (see *R (on the application of Remedy UK) v General Medical Council* [2010] EWHC 1245). The Appellant argued that the emails did not meet the threshold for being abusive. That is essentially a disagreement as to the factual assessment made by the Panel which cannot be regarded as either perverse or irrational given the content of the emails. For present purposes I need not repeat what is set out in the e-mail exchanges but for my part I would find it difficult to reach any different conclusion from that arrived at by the Panel.
17. Insofar as the Appellant asserted that Ms Higgins was corrupt and racist she argued that these were her personal beliefs, that there had been no investigation into her allegations (despite the fact that she had made a complaint to Kent County Council) and thus no decision about whether they were founded or unfounded. Even if they were unfounded or false, she believed them to be true and had not made any statements in bad faith. Her assertion that Ms Higgins was racist was based upon a comment in her report which referred to the Appellant's son, who is mixed race.
18. These were in essence precisely the same arguments that had been raised before the Panel. They were fully addressed in the decision. The contention that Ms Higgins was acting unprofessionally and was dishonest, corrupt and racist were extremely serious allegations and were not evidenced before the Panel. The Appellant's view was that the Panel may have had a predetermined opinion in relation to her; a conclusion to which she came to in particular because of questions asked by the Panel in the course of Ms Higgins evidence. However, the questions which she identified related to a live issue in the proceedings, namely whether the Appellant's allegations had been made in good faith and cannot sensibly be said to indicate any bias. There is, in any event, no prohibition upon a disciplinary Panel taking a proactive role in relation to evidence (see *Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo*, [2004] EWCA Civ 1356)
19. The Panel's material conclusions were:

*"124. Taking all of these matters into account, the Panel concluded that AB's communications with Ms Higgins had been inappropriate because: they had been particularly numerous in a short period of time; their tone had been insulting and rude; and the content had been threatening and made serious allegations without evidence to substantiate them.*

*125. The Panel rejected AB's explanation that she was simply raising concerns about the way in which Ms Higgins was dealing with her case. The Panel accepted that AB's may have had legitimate concerns. However, it did not consider that the*

*need to raise those concerns provided any or any adequate explanation for the number of emails sent, nor the inappropriate tone and content.*

*126. The Panel rejected AB's assertion that her thinking was irrational at that time, impacted by her mental health conditions of anxiety and depression. Although the Panel accepted that AB's was suffering from anxiety and depression at the relevant times, it was not convinced that those conditions were the reason that the emails were numerous, nor the reason for the inappropriate tone and content of the emails."*

20. These are in my view unimpeachable conclusions which the Panel was entitled to come to on the evidence before it which included the cross examination of Ms Higgins and the Appellant. On the material before me I would reach the same conclusion and so reject the appeal against the decision in respect of this allegation.

## **Allegation 2 - Data Handling and Access**

21. These allegations centred on the Appellant's improper handling of, and access to, confidential information.
22. Allegations 2a & 2b related to the Appellant's retention of a safeguarding alert which necessarily contained sensitive information about a child (Service User A) in Kent without having written consent. She then disclosed this confidential safeguarding alert to a third party (Social Work England), also without consent.
23. The Appellant claimed that she kept these documents for potential future whistle-blowing complaints. The Panel rejected this explanation as she had already made complaints through proper channels (including to OFSTED) in relation to Service User A without needing to use the documents. The Panel concluded that she had retained and then disclosed the documents for personal reasons. Although the Appellant suggested that this was speculative reasoning it does not appear to have been in issue that the disclosure to SWE was not connected with a complaint about the treatment of Service User A (as the Panel noted).
24. Allegation 2c relates to the Appellant having, admittedly, accessed the social work records of her own son (Child X) without a legitimate professional reason.
25. The Appellant contended that she had a legitimate reason for accessing the records which was to find out if they were password protected because of her concern that her colleagues might also be able to access them. She said that she had only opened the file for some 2 minutes, that the policies around access were not clear and that she had disclosed the fact that she had accessed the file when she resigned four days later.
26. The Panel rejected the Appellant's explanation because she was not officially assigned to Child X's case (and could not have been given that he is her son), had not raised any formal concerns about her colleagues' potential access and could have addressed her worries through proper channels, such as contacting a manager or the IT department to inquire about access controls. The Panel accordingly gave clear and cogent reasons for rejecting the Appellant's account. Had the Appellant simply wanted to ascertain whether her son's records were protected it appears to me to be unarguable that there were other options open to her rather than accessing confidential information which she must have known she was not permitted to see (whether or not she did look at the contents of the electronic file).

27. Allegation 2d related to the Appellant's retention of records and/or case notes related to Families B and E (from her temporary social worker role in Surrey) beyond the termination of her contract and without obtaining permission from Surrey, the families, or the individuals involved. The Appellant conceded that she lacked authorisation to keep these documents but again attempted to justify her actions by claiming that she intended to use the records for potential whistle-blowing complaints under the Public Interest Disclosure Act 1998. The Panel rejected this explanation finding that the disclosure of these documents to SWE did not serve a whistle-blowing purpose but rather addressed concerns raised by SWE regarding the Appellant's own conduct.
28. The Panel concluded that the Appellant's actions in relation to accessing, retaining and disclosing confidential material constituted a serious breach of professional standards regarding data protection, confidentiality, and proper use of information contrary to Social Work England Professional Standards 2.2, 2.6, and 3.1 (as published in July 2019). There is no basis on which that conclusion can be properly challenged; it falls within the range of reasonable decisions which the Panel could have arrived at on the evidence before it and was based upon a proper consideration of the evidence and appropriate reasoning as set out in the decision.

## **Conclusions**

29. For the reasons given above I dismiss the appeal in relation to allegations 1 and 2 and remit allegations 3, 4 and 5 to be reconsidered by a differently constituted Panel. No further directions in relation to reconsideration are necessary. The Appellant asked me to consider whether her current suspension, which expires in April of next year, could be removed or shortened. The purpose of the interim suspension was plainly to maintain the status quo pending the appeal and it would be an odd result if the Appellant was in a position to apply to be re-admitted to the register whilst there were outstanding disciplinary proceedings. Given the timetable which is now envisaged a Panel hearing will take place before the expiry of the present interim suspension order. There is in fact no power to appeal an interim order which is made at the same time as a final order, as is clear from 16(1)(a)(iii) of Schedule 2 to the Regulations. The parties have agreed to deal with submissions in relation to costs in writing.
30. The parties should provide the court with an agreed draft order giving effect to this judgment and/or any short, written submissions on consequential matters that cannot be agreed by 10.00am on Friday 19 July."

**END**