Neutral Citation Number: [2024] EWHC 73 (Admin)

Case Nos: CO/1089/2022 and
CO/4358/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

ADELAIDE ARKORFUL	**Appellant**
- and -	
SOCIAL WORK ENGLAND	**Respondent**

- -
- -

The Appellant appeared in person
Raphael Hogarth (instructed by **Bates Wells**) for the **Respondent**

Hearing dates: **20 July 2023**

- -

Approved Judgment

This judgment was handed down remotely at 14:00 on 8 February 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 Julian Knowles:

Introduction

1. These are two appeals by the Appellant, Adelaide Arkorful, the Appellant, under [16(1)(b)] of Sch 2 to the Social Workers Regulations 2018 (SI 2018/893) (the SWR). She is a social worker. The Respondent, Social Work England (SWE), is the regulator for the social work profession. It was established by the Children and Social Work Act 2017 and in 2019 it took over the function of regulating social workers from the Health and Care Professions Council (HCPC).

2. On 26 June 2019, after protracted proceedings before the HCPC's Conduct and Competence Panel (the Original Panel), a Conditions of Practice Order (CPO) was made in respect of the Appellant, the Panel having found that she had committed misconduct and that her fitness to practise as a social worker was impaired. The effect of the CPO was to attach conditions to the Appellant's registration, including that she place herself under the supervision of a supervisor, and work with the supervisor to formulate a personal development plan to remediate specified deficiencies in her practice.

3. The Appellant appealed this decision (the First Appeal), however that appeal was dismissed by consent. No appeal of the original CPO decision is therefore before me.

4. In 2022, there were then two reviews of the CPO (one in February and one in November). I will refer to these as 'the February Review' and 'the November Review' respectively. I will deal with the statutory provisions for such reviews under the SWR in a moment. In both reviews, on the basis of the then current position, the decision-makers (the February Review Panel and the November Review Panel, respectively) decided that the Appellant's practice should continue to be subject to conditions, with some changes to the conditions.

5. The Appellant has appealed both review decisions, and these appeals (which I will call 'the Second Appeal' and 'the Third Appeal' respectively) now fall for determination.

6. The Appellant represented herself at the hearing before me. Let me say at once that I recognise and understand how strongly she feels about all of these matters, as was clear from her submissions. She plainly believes she has done nothing wrong and has been badly and unfairly treated by the HCPC and SWE. I had Outline Written Submissions from Mr O'Sullivan of counsel on her behalf (he was not instructed to attend the hearing). I also had a Skeleton Argument from Mr Hogarth for the Respondent. I am grateful to them all.

7. In both appeals the Appellant essentially argues the following grounds:

    a. Ground 1: the findings of the Original Panel in June 2019 were wrong; and

    b. Ground 2: the relevant Review Panel was wrong to find that it would be proportionate to restrict the Appellant's practice for a further period, in particular in view of the impact of the CPO had had and was having on her employment prospects.

8. In response, SWE contends that:

   a. The Second Appeal is out of time and therefore should be struck out.

   b. Further or alternatively, Ground 1 should be struck out or dismissed in each appeal. This ground amounts to an impermissible collateral attack on the original decision from 2019. It is not the function of a review, nor is it the purpose of this Court's process for appealing a review, to re-open the findings of fact in the original decision.

   c. Ground 2 should be dismissed on the merits in each appeal. In circumstances where it had been found that the Appellant's misconduct placed vulnerable service users at risk of harm, and there was no material change in her fitness to practise, it was lawfully open to both review panels to decide that a further period of restrictions on the Appellant's practice was appropriate. Those panels properly had the protection of the public and public confidence in the profession at the forefront of their minds. I should defer to their expert professional judgment.

9. For completeness, I should mention there is an application by the Appellant dated 6 July 2023 for a retrospective extension of time for filing a Skeleton Argument and other documents. SWE does not object to me considering the material *de bene esse*, without prejudice to its position that most of the material is irrelevant. I grant this application. To the extent there is also a request for disclosure, I reject that, as disclosure took place in 2018 in advance of the hearing before the Original Panel: see the witness statement of Samantha Ferreira, a legal executive with SWE, at [40]-[44]. The Appellant made a point orally about disclosure of case notes, but I am satisfied that proper disclosure was provided by the HCPC in advance of the original hearing in 2019, and that everything was before the Review Panels which needed to be.

10. As well as my notes, I have consulted recordings of the hearing when preparing this judgment.

The legal framework

11. This section of my judgment is uncontroversial and is largely taken from Mr Hogarth's Skeleton Argument.

12. In summary, since the proceedings involving the Appellant began, there have been changes in the regulatory framework governing social workers.

13. Prior to 2 December 2019, social workers were regulated by the HCPC, and fitness to practise proceedings for social workers were governed by the Health Professions Order 2001 (SI 2002/254) (the HPO).

14. The HPO provided for the investigation of allegations of (among other matters) misconduct or lack of competence, and for references in appropriate cases to the HCPC's Conduct and Competence Committee (the Committee). Where a case was found to be proved, the Committee could make various types of order, including making an order imposing conditions on the social worker. Such orders could be appealed to the High Court.

15. Section 36 of the Children and Social Work Act 2017 established SWE as the regulator of social workers in England. Section 37 provides that the over-arching objective of the regulator in exercising its functions is the protection of the public.

16. SWE's functions under the Act, including its duty to make arrangements for protecting the public from social workers in England whose fitness to practise is impaired under s 44, were brought into force on 2 December 2019.

17. The statutory scheme governing SWE's powers, and fitness to practise proceedings, is contained in the SWR. On 16 December 2022, amendments to that scheme came into force as a result of the Social Workers (Amendment and Transitional Provision) Regulations 2022 (SI 2022/1216). The two appeals before me (and the February and November Reviews) are governed by the SWR in their original form.

18. Under various transitional provisions, the detail of which it is not necessary for me to go into, orders made under the former statutory regime fell to be treated as having been made under the new provisions, with the appeal right being treated as an appeal under the new framework.

19. Under [12(3)(b)] of Sch 2 to the SWR, SWE's adjudicators (equivalent, in effect, to HCPC's Conduct and Competence Committee and Health Committee combined) can make a final order where they determine a social worker's fitness to practise to be impaired. Paragraph 13(1) of Sch 2 made provision as to what final orders can be imposed in SWE's own fitness to practise proceedings:

> "(1) A final order may -
>
> (a) require the removal of the social worker's entry from the register (a 'removal order'),
>
> (b) suspend the social worker from practising for such period as is specified in the order (a 'suspension order'),
>
> (c) impose a restriction or condition with which the social worker must comply for such period as is specified in the order (a 'conditions of practice order'),
>
> (d) give a warning to the social worker regarding their future conduct or performance (a 'warning order')."

20. The statutory framework provides for regular reviews of suspension orders, and orders imposing conditions. Paragraph 15 of Sch 2 provided as follows at the material time, in relation to mandatory reviews (under [15(1)]) and discretionary reviews (under [15(2)]):

> "(1) The regulator must review a suspension order, or a conditions of practice order, before its expiry, and may -

(a) with effect from the date on which the order would have expired, extend or further extend the period for which the order has effect, provided that the extended period does not exceed three years,

(b) with effect from the expiry of the order, make any order which the case examiners or the adjudicators (as the case may be) could have made at the time they made the order, provided that the period for which the orders have effect does not exceed three years in total,

(c) in the case of a suspension order, with effect from its expiry make a conditions of practice order with which the social worker must comply if they resume practice as a social worker at the end of the period of suspension specified in the order.

(2) The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the social worker, and may -

(a) confirm the order,

(b) extend, or further extend, the period for which the order has effect, provided that the extended period does not exceed three years,

(c) reduce the period for which the order has effect, but in the case of a warning order, not so that it has effect for less than one year beginning on the date when the order was made under paragraph 12(3)(b),

(d) substitute any order which the adjudicators could have made at the time they made the order under paragraph 12(3)(b),

(e) revoke the order, and in the case of a suspension order may make the revocation subject to the social worker satisfying such requirements as to additional education or training and experience as apply to them,

(f) revoke or vary any condition imposed by the order."

21. The current *Impairment and Sanctions Guidance* published by SWE explains at [217] that a review panel will:

"consider whether (all of the following):

- the social worker has demonstrated remediation, insight and/or remorse

- the social worker has demonstrated they are now safe to practise and/or there is no longer a risk to the public

- the social worker has taken steps to maintain their skills and knowledge

- the social worker's fitness to practise remains impaired (and if so, whether the existing order or another order needs to be in place)

- the adjudicators should consider whether the social worker has sufficiently addressed the concerns raised in the original finding of impairment.

The outcome of a review could be to (any of the following):

- extend the period for which the previous order is in place (provided that any extension does not exceed 3 years at a time)

- replace a suspension order with a conditions of practice order

- make an order that case examiners or adjudicators could have made at the time (provided that the order does not exceed 3 years at a time)

- revoke the order in place."

The function of a review hearing

22. The author of Hamer's *Professional Conduct Casebook* (4th Edn) states at [75.38]:

> "[a] review hearing is not an appeal or an opportunity to reopen the earlier determination, but a procedure to consider and determine, with the benefit of evidence and submissions, whether the practitioner's fitness to practise remains impaired as a first step before going on to consider whether to extend or vary the original order."

23. This approach is reflected in the Sanctions Guidance published by SWE that was in force at the time of the impugned decisions in 2022, which stated the questions of impairment and sanction as follows:

> "Social Work England must review a suspension order or a conditions of practice order before it expires. A review must apply the same principles of protection and wider public interest, together with proportionality, when deciding whether the social worker is fit to practise and if not, what sanction should be imposed".

24. The Guidance was subsequently updated to explain in more detail, at [217]:

> "The review process should not undermine the original decision made by the case examiners or adjudicators. A review looks at what has happened since the order was put in place".

25. I will return to this topic later with reference to the case law.

The appeal jurisdiction following a review hearing

26. Paragraph 16 of Sch 2 to the SWR provides, insofar as material:

> "(1) A social worker may appeal to the High Court against -
>
> (a) the decision of adjudicators—
>
> […]
>
> (iii) to make a final order,
>
> (b) the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
>
> (2) An appeal must be filed before the end of the period of 28 days beginning with the day after the day on which the social worker is notified of the decision complained of.
>
> (3) On an appeal the High 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,

> and may make any order as to costs as it thinks fit."

27. Prior to 16 December 2022, when the SWR were amended, [16(2)] read:

> "An appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of."

The High Court's approach on an appeal

28. Under CPR r 52.21(3)(a)-(b), the appeal court will allow an appeal where the decision of the tribunal from whose decision an appeal is brought was 'wrong' *or* 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court.'

29. A point to note is that CPR r 52.21(1) provides:

> "Every appeal will be limited to a review of the decision of the lower court unless –
>
> (a) a practice direction makes different provision for a particular category of appeal; or
>
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing."

30. Before the transfer of social work regulation to SWE, appeals against HCPC's fitness to practise decisions under Article 38 of the HPO were covered by [19.1(1)(d)] and [19.1(2)] of CPR PD 52D, which states that such appeals 'will be by way of re-hearing.'

31. In *Anderson v Social Work England* [2020] EWHC 430 (Admin) and *Northover v Social Work England* [2020] EWHC 3259 (Admin), the High Court proceeded on the basis that an appeal under [16] of Sch 2 to the SWR is also by way of re-hearing. However, the relevant paragraphs of the PD do not ostensibly apply to appeals under the SWR. Ultimately, however, as Mr Hogarth submitted, in many cases little is likely to turn on the point, as 'the difference between a 'review' and a 'rehearing' is clearly thin and variable according to the circumstances and needs of each case', bearing in mind that there will be no fresh evidence in either type of appeal in the absence of permission: *Meadow v General Medical Council* [2007] QB 462, [128]. Either way, the central issue for the Court is whether the decision below was wrong: *Northover*, [30].

32. That said, there is a difference between a review and a re-hearing. The relevant principles, and those that apply on an appeal against the decision of a specialist professional regulatory tribunal, were discussed in *Sastry and another v General Medical Council* [2021] WLR 5029, [96]-[117]. Again, I will come back to this later.

Factual background

33. I can take the factual background comparatively briefly having regard to the issues on these appeals.

34. At the relevant time the Appellant was a social worker employed by the London Borough of Newham (the Council).

35. Proceedings against the Appellant under the HPO began in 2017. There were four sets of allegations before the Original Panel. One set of allegations related to Family A. It was alleged the Appellant had failed properly to record visits to the family and had mishandled the 'child in need' process (a child in need is a vulnerable child to whom local authorities owe particular legal duties under the Children Act 1989: s 17(10)). The second set of allegations related to Family B. They included, that the Appellant had lent money to a child's mother; that the Appellant took several hours on one occasion to pick a child up from school upon being informed that the child's mother had not done so; and was at fault in other ways. The third set of allegations related to alleged failures to undertake statutory visits, or record child protection visits, on the Council's Carefirst system in respect of a number of children over a period of months in 2016. The fourth set of allegations related to alleged failures to undertake child in need visits, or record these visits on the Carefirst system, in respect of a number of children over a period of months in 2016.

36. On 1 October 2018, there was a hearing before the Original Panel. Following a successful application to amend the allegations ([1]-[5]), some oral evidence from a family support worker with the Council (RR) ([8]-[9]), and two successful applications by the Appellant to adduce some documentary evidence ([10]-[14]), the hearing was adjourned to give proper time for consideration of this evidence. A direction was also made that the Council produce all records on its Carefirst system relating to a specified period.

37. At the resumed hearing on 18 March 2019, the Appellant was represented and produced a witness statement and further material ([20]-[21]). Her representative stated that he had received 1300 pages of care records and had reviewed them. The Panel heard oral evidence from three witnesses for HCPC, and the Appellant, and the decision records their evidence and cross examination: [27]-[68]. It received written and oral closing submissions from the HCPC ([69]-[72]) and the Appellant's representative ([73]-[75]).

38. On 25 June 2019, the hearing resumed. There was no further evidence and the Appellant did not attend. The Panel then gave its decision.

39. It made findings on the quality of evidence from each witness called on behalf of the HCPC ([91]-[95]). It noted, among other things, that none of them bore any ill will towards the Appellant and it accepted them as credible. On the other hand, the Panel said that the Appellant's evidence had been 'frequently confused'; it 'lacked consistency and coherency'. Further, 'several times she gave explanations which she had not set out in her witness statement and she also referred to material which she had not produced to the Panel'. Her evidence 'at times lacked both credibility and reliability'.

40. It went on to make findings in relation to the individual allegations against the Appellant: [97]-[116].

41. The Panel went on to consider whether these findings of fact amounted to one of the statutory 'grounds' for considering impairment of fitness to practise: in this case, misconduct or lack of competence: [117]-[136]. They found that several of the Appellant's failings amounted to misconduct.

42. The Panel went on to consider whether the Appellant's fitness to practise was impaired: [130]-[136]. It noted its duty to keep the public interest at the forefront of its mind: [130]. It noted that the oral and documentary evidence demonstrated that the Appellant lacked insight and had a tendency to deflect blame onto others and to blame system failures; did not accept responsibility for her actions; and did not consider or appreciate the impact of her actions on others: [131]. There was no evidence of steps taken to remediate her practice: [132]. The Panel could not be satisfied that she would not repeat her actions: [133]. A well informed and reasonable member of the public would be rightly concerned, were a social worker such as the Appellant to be permitted to practise on an unrestricted basis: [134]. Public confidence in the profession and the regulator would be undermined, absent a finding of impairment. The Panel found that her fitness to practise was currently impaired: [136].

43. The Panel turned to consider sanction: [137]-[149]. It rightly worked upwards from the least restrictive sanction. It determined that the Appellant's deficiencies were remediable, and that a CPO could facilitate remediation while protecting the public. The Appellant had 16 years of experience as a social worker without regulatory concerns, and had received positive references from colleagues: [144]. The Panel concluded that it could formulate a CPO that was realistic, appropriate and proportionate: [146]. It imposed conditions for one year, which it considered a fair and proportionate period in which for the Appellant to take steps to remedy her practice. The Panel made an interim order to cover the relevant period for an appeal before the final CPO came into effect.

The First Appeal and its dismissal by consent

44. The Appellant lodged an appeal against the Original Panel's decision. On 2 December 2019, the functions of HCPC transferred to SWE, as set out above. Accordingly, the CPO made under the HPO became a CPO deemed to be made under the SWR, and the appeal continued as an appeal against SWE.

45. On 15 March 2021, the First Appeal was dismissed by consent. The CPO therefore came into force on this date. The parties agreed that SWE would 'pro-actively engage with the Registrant to establish what evidence she has and consider an early review'**.**

Consideration of an early review

46. As explained in the witness statement of Samantha Ferreira, on several occasions in April 2021 and May 2021, SWE asked the Appellant to provide any new evidence in support of her request for an early review of her CPO. Between September 2021 and December 2021, the Appellant forwarded a number of documents including some references.

47. On 16 December 2021, SWE wrote to the Appellant's counsel saying that it would not:

> "… be exercising our discretion to hold an early review as we do not consider that new evidence has been submitted that is relevant to the order or that the order is no longer appropriate or workable."

The February 2022 Review

48. The CPO was due to expire on 14 March 2022 (that is, at the end of one year starting with the date on which it came into force). SWE was bound to review the CPO before its expiry under [15(1)] of Sch 2 to the SWR. Accordingly, on 8 February 2022, SWE held a final order review hearing (the February Review).

49. The February Review Panel consisted of a Chair and an adjudicator and it had before it a quantity of material including the references submitted the previous year by the Appellant.

50. SWE proposed that the Appellant's practice should continue to be restricted, with certain amendments to the conditions, for a further period of 12 months. In her statement, at [27], the Appellant stated as follows in relation to SWE's proposals:

> "A. I am in general agreement with such conditions.
>
> B. With respect to condition number 2 I agree but should be given notice of the information said to be exchanged and before it is exchanged.
>
> C. The conditions should not be published, and the public given access and SWE should provide a suitable undertaking not to do so."

51. The February Review Panel: set out the allegations that were found proved by the Panel ([7]), which of them were found to constitute misconduct ([8]); the Panel's findings on impairment ([9]) and sanction ([10]); the terms of the original CPO ([11]); SWE's proposals ([13]) and the reasons for them ([12]). The Review Panel set out SWE's's submissions on current impairment ([16]-[20]) and sanction ([21]-[23]). The Review Panel considered the Appellant's written statement ([24]-[29]) and the written references provided ([30]), along with her counsel's oral submissions on the length of the CPO and its publication ([31]-[37]). The Panel recorded the legal advice it received ([38]-[41]).

52. The Review Panel directed itself as to its over-arching objective ([42]). It noted the Appellant's 16 years of practice ([43]), and the seriousness of her failings ([44]). The Review Panel found that there was a lack of evidence of significant remediation. Her written statement about record-keeping was not an adequate substitute for this in view of SWE's over-arching objective ([45]). The Review Panel derived only limited reassurance from the references, given that they were undated, pre-dated the Panel's findings or referred to her practice before that hearing, and dealt with record-keeping to only a limited extent ([46]). There was some insight but it was only embryonic and had emerged immediately before the hearing ([47]). A reasonable member of the public would be concerned if the Appellant were allowed to practise without conditions ([49]),

and professional standards would be compromised ([50]). Hence her fitness remained impaired.

53. As to sanction, the February Review Panel properly ascended up the 'ladder' of sanction. Unrestricted practice was not appropriate ([51]). Her proven failings were remediable and a continuation of the CPO would facilitate remediation ([52]). Six months would not provide a sufficient opportunity for remediation but nine months (less than the period sought by SWE) would do so ([53]). The conditions proposed by SWE were appropriate and workable ([54]).

The Second Appeal (CO/1089/2022)

54. The Appellant has sought to appeal the February 2022 Review. This is the Second Appeal. The Respondent says her Appellant's Notice is out of time and that this appeal should therefore be struck out without consideration of the merits. I will return to this issue later.

55. In support of her Second Appeal the Appellant filed a lengthy document (42 pages) entitled 'Grounds for Appeal'. This was a mixture of things written by her, interspersed with emails and other material. She made the general point that she was unemployable whilst she had conditions on her registration.

56. I have been through this document. It contains the Appellant's commentary on the Original Panel's 2019 decision that she had committed misconduct, and its decision to impose a CPO. If not quite a paragraph by paragraph critique, it contains criticisms of significant parts of the decision, and it is clear that in this document the Appellant is seeking to show the original 2019 decision was wrong. At one point she said, 'I have done no wrong … This matter is unfair unjust and the panel decision simply wrong '.

57. She also said:

> "Bearing in mind the 2021 published criteria for review the continuation of conditions imposed by the order following the Panel's determination on 26 June 2019 cannot now in the light of the passage of time be either proportionate or in the wider public interest nor are they necessary to maintain confidence
>
> …
>
> The time must surely have come when I should be restored to my practice without restrictions and to undertake employment again as a social worker and continue my chosen vocation in life."

58. I therefore approach this document on the basis that there are two grounds of appeal advanced on the Second Appeal, and the Respondent agrees: (a) that the 2019 decision was wrong and/or unjust (Ground 1); (b) the CPO should not be continued and it would be wrong or disproportionate to do so (Ground 2).

59. The witness statement of Samantha Ferreira sets out, in Schedules A-C, the passages of this document which arguably fall within the second ground of appeal.

60. There is also a 'Statement of Case' from July 2023 prepared by the Appellant, together with some exhibits. Although this is captioned, 'The HCPC decision of 26th June 2019 and the subsequent SW England review decisions of 8th February 2022 and 2nd November 2022 are flawed for the following reasons', it primarily contains criticisms of the Original Panel's decision rather than the review decisions. There was also an email from Ms Arkorful sent to the Court Office shortly before the hearing, which I have read.

The November 2022 Review

61. The CPO, as continued in February 2022, was due to expire on 13 December 2022. Accordingly, a further mandatory review was held on 2 November 2022 (the November 2022 Review). There were three bundles before the November Review Panel, containing over 1000 pages. These documents included, for example, emails sent by the Appellant to SWE; photographs of pages of documents; photographs of post-it notes; and screenshots of unidentified documents. In the documents she continued to maintain that she had not committed misconduct (and thus that the 2019 Panel had been wrong).

62. The Respondent said this at [48] of its Skeleton Argument about preparations for the November Review (citations omitted):

> "48. The Appellant was unrepresented at this stage and Social Work England did its best to collate her various submissions into indexed bundles for consideration by the review panel **…** However, and with respect to the Appellant, it is not at all clear what she wished Social Work England to do with most of the documents she was sending, what many of these documents were, nor which issues they were said to go to. On 18 October 2022, the Appellant also sent a lengthy 'review statement' **…** in which she copy-and-pasted various fragments of documents, and which appears similar to her most recent Grounds of Appeal. Social Work England's solicitors informed the Appellant that that the Review Panel would not be reconsidering the Original Decision, and stated: '[w]e would therefore encourage you to concentrate your submissions for the Panel on how you have remediated the concerns and kept your Social Work knowledge up to date and any recent positive testimonials in support of your return to unrestricted practice' … The Appellant insisted that all of her documents should be available to the review panel … The Appellant was plainly distressed and would benefit from legal representation; Social Work England's case review officer also gave her the details of an organisation that provides pro bono legal assistance, and directed her to other sources of support …"

63. In its Skeleton Argument before me at [49], as a matter of fairness to the unrepresented Appellant, SWE drew attention to: a reference dated 21 August 2022 from Judith Kinobe (the Appellant's supervisor in June-November 2016), which made positive comments about the Appellant working hard and completing recordings in a timely manner; a positive reference from a colleague Ms Morrison from August 2022; and a letter from an agency saying the Appellant had undertaken placements as a support worker from 20 November 2019 to the date of the email, as well as other material.

64. The Appellant did not attend the November hearing. The November Review Panel had regard to documents establishing that notice of the hearing had been served on the Appellant ([8]-[10]), and made a reasoned decision to proceed in the Appellant's absence, mindful of the statutory requirement to review the order and the need to minimise any disadvantage to the Appellant by considering the written material she had provided ([11]-[16]). The Panel set out the material background, namely the proved allegations of fact ([19]); the findings of misconduct ([20]); the findings of the previous reviewing panel on impairment ([21]), the findings of the previous reviewing panel on sanction and the terms of its order ([22]-[23]).

65. SWE invited the Panel to extend the CPO, with minor amendments, for a period of nine months ([25]-[26]). The Panel recorded that the Appellant continued to dispute findings made against her by the Original Panel, and had regard to the further references she had submitted ([27]). As to current impairment, the Panel noted the need to protect the public and public confidence ([29]); had regard to the documentation before it ([30]); noted the seriousness of the findings proved against the Appellant ([31]), and considered that they were capable of remedy ([32]). Having considered the documents submitted by her, it found that the Appellant still had a 'considerable way to go' to demonstrate insight ([33]), and there had been 'no material change' in her remediation ([34]). The Panel did not find the references submitted helpful, for much the same reasons as those given by the February Review Panel ([35]). Bearing in mind the high risk of repetition ([36]), lack of insight and remediation, and the impact on public confidence, it found her fitness to practise impaired ([37]-[38]).

66. As to sanction, the Panel considered that some form of restriction was required given the seriousness of the failings ([39]), but as the failings were remediable, a CPO would facilitate such remediation and insight ([40]). The conditions proposed by SWE were appropriate, and the Review Panel made a CPO for a period of 9 months ([41]-[43]).

The Third Appeal (CO/4358/2022)

67. On 22 November 2022, the Appellant filed (and the Court sealed) an appeal of the November 2022 Review Decision. This is the Third Appeal. Her Grounds of Appeal, dated 2 November 2022, are lengthy (over 90 pages). However, as with the Second Appeal, two grounds of appeal can be derived: (a) the 2019 decision by the Original Panel was wrong (Ground 1); (b) the continuation of the CPO would be disproportionate (Ground 2).

Submissions

The Second Appeal

68. In the written submissions prepared by counsel, the Appellant made the following points.

69. The conduct of the review was procedurally unfair in that the Panel had ordered disclosure of case notes which would have assisted the Appellant but which had not been taken into account. The Panel did not hear from anyone from the Council and therefore had no insight into its working procedures. The Panel had acted irrationally and/or failed to have regard to relevant matters including the requirements of good practice in social work of active auditing of live files with the social worker assigned present. It also failed to take into account or properly weigh in the balance evidence in the form of references and her unblemished 16 year record as a social worker. The duration of the CPO was disproportionate.

70. I have reviewed also the points which the Appellant made to me orally, which I do not think I need to set out. They focussed on the original allegations against her. As I have mentioned, she feels very strongly that the original 2019 decision to impose the CPO was wrong.

71. In response, the Respondent said that the Second Appeal was out of time. Under the SWR there is a strict 28 day limit for filing appeals, which the Appellant did not abide by. The discretion to extend time is very narrow and should only exceptionally be exercised. There was no proper basis for doing so in this case. The appeal should therefore be struck out.

72. On the merits, in relation to Ground 1, the Respondent said it is well-established in the authorities that on a statutory review of a sanction imposed by a professional disciplinary body, the original findings of fact leading to the sanction cannot be re-opened. Accordingly, Ground 1 was without merit.

73. On Ground 2, shortly before the February 2022 Review the Appellant had accepted the CPO should continue and it was therefore hard for her to maintain its continuation was wrong. Further and in any event, I should defer to the Review Panel's expert conclusion that the continuation of the CPO was necessary to protect the public. The Panel found, as it was entitled to, that the risk to the public had not materially changed, not least because the Appellant had not remediated her practice or shown significant insight: see [42]-[50]. There was no basis for concluding that the Panel's decision was 'wrong'.

The Third Appeal

74. Earlier I set out the two grounds I was able to distil from the Appellant's lengthy grounds of appeal document. They are in substance the same as her grounds on the Second Appeal, which I addressed earlier.

75. After noting that the Appellant did not attend the November Review hearing because she was unable to secure representation, counsel's written submissions were as follows:

> "29. A repeats the points made under the earlier appeal.
>
> 29. The imposition of a further 9 months of conditions on fitness to practice is a wholly disproportionate sanction. A

> has been subject to conditions for over 4 years, severely impacting on her employment. She has shown insight, through her witness statement, and is willing to undergo training.
>
> 31. A seeks an order quashing the decision to impose a further 9 months of conditions."

76. In response, the Respondent essentially repeated its submissions on the Second Appeal.

77. It specifically noted that the Appellant relies on an email from a former colleague that went before the November Review Panel, dated from August 2022, attesting to the quality of her work between June 2016 and 24 November 2016 (a period which overlapped with the allegations found proven). The reference read as follows:

> "Dear Ms [],
>
> Adelaide has asked me to write a reference for her as I was her line supervisor in Newham from June 2016 to 24th November 2016.
>
> I wish to confirm that during the time I supervised her, Adelaide worked hard on her cases and she completed her recordings in a timely manner though she initially used our administration officer to put these details on the carefirst system as she was not registered on the system.
>
> I do remember that any learning issues to progress were pointed out in her supervision notes but I did not have any issues that needed disciplinary action to be taken. As far as I remember, she did the required statutory visits on her cases.
>
> Adelaide had informed me during supervision that she had not done a lot of court work and I noted that she needed close supervision especially with court cases. As I left in the middle of a very difficult court case, I asked the new manager to give her as much support as possible which I later learnt was not given.
>
> I do feel that this may have had a negative impact on all her cases as she struggled to manage this and the other cases she had.
>
> I hope this is useful and please do not hesitate to contact me if you need any more information.
>
> Judith Kinobe
> Retired Assistant Team Manager (Locum at Newham 2013 to 2016)"

78. The Respondent said this was not relevant to the Review Panel's task, given it was dealing with historic matters rather than the up to date position, and in any event was vague and brief and could not have displaced the detailed consideration that the Original Panel gave to the evidence it received.

79. In relation to Ground 2, the CPO ordered by the November 2022 Review Panel was not disproportionate, for substantially the same reasons as applied in respect of the February Review. There had been no material change in her remediation or insight: [32]-[38] of the November 2022 Review Decision. Accordingly, there had been no material change to the risk to the public. Hence, having regard to the deference that I should show to the Panel's professional judgment, there was no basis to impugn the Panel's decision.

Discussion

The Second Appeal

Preliminary issue: Is this appeal out of time ?

80. In an order dated 5 June 2023 joining the Second and Third Appeals, Sir Ross Cranston sitting as a High Court judge noted that in May 2022 the Respondent had applied to strike out the Second Appeal as being out of time. He said that there had been problems within the Administrative Court Office in determining what had happened, but that the Office had reported as follows:

> "8. What seems to have happened is that the appellant did try lodging her appeal on 7 March 2022 – in other words, in time - when a fee of £259 was paid at the Fees Office. There is a fee stamp for that sum attached to the appellant's notice for this appeal, CO/1089/2022, and a note of documents having been received in what is now the KBD. For reasons which are unclear, an appellant's notice was not issued by the ACO until 28 March 2022.
>
> 9. The court's records for CO/2848/2019 have a copy of page 1 of an appellant's notice using that reference but bearing a fee stamp from the Fees Office on 7 March 2022 (saved on the court's system on 10 March 2022).
>
> 10. It therefore appears that this appeal had been received in the RCJ in time, albeit not necessarily within the ACO, and presented with the wrong copy of the appellant's notice."

81. The Respondent did further work on this issue in the lead up to the appeal hearing before me, and sought documents from the Court, in order to determine the sequence of events.

82. Following their enquiries, and having considered the documents, I am satisfied that the Appellant's Notice in the Second Appeal was indeed filed outside the 28 day time limit provided for by the SWR.

83. At the relevant time, [16(2)] of Sch 2 to the SWR required an appeal to be made within 28 days of the day on which the social worker was notified of the decision under appeal. What appears to have occurred is this (Respondent's Skeleton Argument, [55] et seq).

84. The Appellant was notified of the February 2022 Review Decision on 10 February 2022: see the witness statement of Holly Bontoft (a solicitor with SWE), [8]. The last day for filing the Appellant's Notice was therefore 10 March 2022.

85. The Court file contains two documents on which the date 7 March 2022 appears. Neither is the Appellant's Notice in the Second Appeal. One document is the Appellant's Notice in the *First* Appeal (which was dismissed by consent) (where the Respondent is named as HCPC rather than SWE), with a fees stamp dated 7 March 2022 a third of the way down the page on the right. The second document is a receipt from the Fees Office, with a Fees Office 'received' stamp dated 7 March 2022 and a note stating 'docs received over counter'.

86. Accordingly, it would appear that the Appellant paid a fee on 7 March 2022, but did not file her Appellant's Notice in the Second Appeal, and rather attended the Court building with the Appellant's Notice in her *First* Appeal.

87. The documents indicate that the Appellant's Notice in the Second Appeal was filed out of time, on 28 March 2022. This can be seen from the first page of the Appellant's Notice in the Second Appeal (which has the correct reference number CO/1089/2022), in the 'For Court use only' box in the top-right-hand corner. This records that the Notice was filed on 28 March 2022, and the Notice is stamped with the Court's stamp on 28 March 2022. It can also be seen from a letter from the Court to the Appellant dated 28 March 2022 which also has the case number CO/1089/2022 and states, 'We received your matter on 28/03/2022'.

88. When filing her Appellant's Notice, the Appellant made an application to extend time for filing. The relevant box in Section 9 seeking an extension of time is ticked, and various assertions in Section 10 were made in support. The question therefore is whether such an extension should be granted.

89. Paragraph 3.5 of CPR PD52D provides:

> 'Where any statute prescribes a period within which an appeal must be filed then, unless the statute otherwise provides, the appeal court may not extend that period.'

90. The SWR do not on their face give the Court a jurisdiction to extend time. The authorities show that in such circumstances time may only be extended – in other words, the relevant absolute statutory provision 'read down' – where it is necessary to do so to comply with Article 6 of the European Convention on Human Rights (ECHR), that is, where to deny a power to extend time would impair the very essence of the right of appeal: *Adesina v Nursing and Midwifery Council* [2013] 1 WLR 31, [14]-[15]; cf

Sun v General Medical Council [2023] EWHC 1515, [51, [53]. But the discretion is a narrow and not a general one. The discretion to extend time must only be exercised in 'exceptional circumstances', such as where the appellant personally did all s/he could do to bring the appeal timeously. In *Adesina*, [14], the example was given of where the appellant, having been 'struck off', succumbs to serious illness and remains in intensive care In *Gupta v General Medical Council* [2020] EWHC 38 (Admin), [46], it was again emphasised that the jurisdiction to extend time is strict, and also that litigants in person should not be given any special indulgence: Ibid, [59].

91. In *Stuewe v Health and Care Professionals Council* [2023] 4 WLR 7, [48], the Court referred to the discretion to extend time as 'a narrow discretion that arises in exceptional circumstances.' Cases showing how strict the test is include: *Pinto v Nursing and Midwifery Council* [2014] EWHC 403 (Admin) (some ill health and stress and attending court office with insufficient funds to pay the court fee); *Nursing and Midwifery Council v Daniels* [2015] EWCA Civ 225 (three day delay arising out of an inability to find funds to pay the court fee); *Darfoor v General Dental Council* [2016] EWHC 2715 (Admin) (one working day late in filing, having attended on the final day of the time limit without correct documentation); *Gupta* (almost a week's delay in circumstances where a litigant in person attempted to file notice of appeal on the final day of the appeal period by email when filing was required by post or in person). In none of these cases was it was held that the high threshold triggering the jurisdiction had been met. However, ultimately, each case will turn on its own facts and the assistance to be drawn from the outcomes on the facts of other cases may be limited: *Stuewe*, [55].

92. On the facts, I do not consider that there is a proper basis to extend time here. There is little or nothing by way of explanation from the Appellant about why she did not - or could not - comply with the time limit. Her 'evidence' in support of her extension application in Section 10 of the Appellant's Notice was as follows:

> "- I presented my case on the 7/3/22
> - I paid my fees to the fees office – please refer to the receipt thanks
> - The old Appellant's reference number was used
> - A member of the RCJ team contacted me and sent me and sent me (sic) a new Appellant's notice form to me for completion and provide a copy of the fee stamp (sic) when returning my documents – thanks"

93. As I have said, therefore, it would appear that the Appellant did not attend Court with the correct documents to file the Second Appeal in time.

94. The Second Appeal is accordingly struck out because it is out of time. Equally, in the circumstances I could just have simply said the appeal is dismissed on that basis, as in *Stuewe*, [68], where the appeal was dismissed as being out of time; see also eg, *Stevenson v General Optical Council* [2015] EWHC 3099 (Admin), [39]; *Adegbulugbe v Nursing and Midwifery Council* [2013] EWHC 3301 (Admin), [28], *Mitchell v Nursing and Midwifery Council* [2009] EWHC 1045 (Admin). [14], where the appeals were dismissed for being out of time. Nothing turns on the different methods of disposal. The appeal fails either way.

Merits

95. But in case I am wrong in that conclusion, I will go on to consider the merits of the Second Appeal.

96. Earlier I identified the two grounds of appeal which can be derived from the Appellant's 42 page 'Grounds for Appeal'. The Appellant's Notice also says this (as in original):

> "I BELIEVE THE DECISION MADE BY THE TRIBUNAL IS WRONG AND UNFAIR.
> THERE WERE PROCEDURAL ERRORS lN THAT THE PANEL ACCEPTED MISINFORMATION AS FACT AND THERE WAS LACK OF CLARITY WITH RESPECT TO THE ACTUAL ALLEGATIONS WHEN CONDISERED IN THE LIGHT OF ACTUAL SOCIAL WORK PROCEDURES AND PRACTICE
> THE PANEL'S DECISION WAS MAINLY BASED ON HEARSAY EVIDENCE OF ONE MANAGER (STUART ANDREWS) WHO DID NOT LINE MANAGE ME.
> THE WITNESSES CALLED WERE A FAMILY SUPPORT WORKER WHO WORKED IN A FAMILY CENTER AND WAS STATED TO HAVE BEEN A REGISTERED SOCIAL WORKER WHICH IS INCORRECT (PARA 26 OF DECISION) AND THE HEADMISTRESS OF A SCHOOL IN HACKNEY BOROUGH. THERE WAS NO REPRESENTATIVE FROM THE CURRENT SOCIAL WORKER TEAM OR MANAGEMENT.
> THE PANEL RELIED ON INFORMATION PROVIDED BY A MANAGER WHO HAD NO KNOWLEDGE OF MY WORK.
> THIS MANAGER WAS NO LONGER EMPLOYED BY NEWHAM COUNCIL NEWHAM COUNCIL WAS UNAWARE OF THIS REFERRAL TO HCPC;
> NO EVIDENCE WAS SOUGHT OR OBTAINED FROM NEWHAM COUNCIL WHO I WAS CONTRACTED TO WORK FOR STUART ANDREWS DID NOT MAKE CONTACT WITH MY AGENCY WHEN HE ALLEGEDLY INITIALLY IDENTIFIED CONCERNS AND THIS WAS NOT TAKEN INTO CONSIDERATION BY THE PANEL. THE POSSIBLE REASON IS THAT HE WAS UNAWARE OF ANY OF MY WORK, NEITHER DID ANY OF THE MANAGERS DIRECTLY SUPERVISING ME RAISE ANY CONCERNS ABOUT MY WORK OR COMPETENCE TO PERFORM MY DUTIES
> STUART ANDREWS OR ANY OTHER MANAGER AT NEWHAM, DID NOT AT THE TIME I WORKED FOR NEWHAM, RAISE ANY CONCERN CONCERNS TO MY AGENCY IT TOOK ALMOST A YEAR FOR MR

> ANDREWS TO INFORM MY AGENCY OF THE MATTER BEFORE HCPC BY WHICH TIME HE HAD ALREADY RAISED THE MATTER WITH HCPC 4 MONTHS PRIOR I AM NOT IN AGREEMENT WITH SOME OF THE EVIDENCE PRESENTED BY STEWART AND THE TWO WITNESSESS.
> THE TRIBUNAL DID NOT SEEK INFORMATION FROM NEWHAM COUNCIL DIRECTLY. MUCH OF THE EVIDENCE REQUIRED FOR THIS CASE WAS IN THE NEWHAM SYSTEM BUT THIS WAS NOT ADUCED IN THIS CASE THE ONUS WAS ON THE HCPC TO VERIFY THE INFORMATION THEY HAD RECEIVED AND THIS COULD HAVE BEEN DONE HAD THEY INCLUDED NEWHAM IN THE PROCEEDINGS. NEWHAM WAS NOT A PART OF THE ENTIRE PROCEEDINGS.
> l DID THE VISITS AND DID THE RECORDINGS I HAVE BEEN ACCUSED OF NOT DOING. THIS COULD EASILY HAVE BEEN VERIFIED BY CHECKING THE FACT WITH NEWHAM. I WAS NO LONGER WORKING WITH THE COUNCIL THEREFORE I HAD NO ACCESS. HOWEVER, THE HCPC COULD HAVE REQUESTED THIS INFORMATION.
> AS A RESULT OF THE UNFAIRNESS AND PROCEDURAL IMPROPIETY I WAS UNABLE TO SHOW REMORSE NOR INSIGHT INTO THE REASONS WHY HCPC ARRIVED AT THEIR DECISION I THEREFORE RESPECTFULLY REQUEST FOR A REVIEW OF THE TRIBUNAL PROCESS AND OUTCOME. AND FOR NEWHAM TO PRESEN THE EVIDENCE I HAVE REQUESTED IN MY RESPONSE TO THE TRIBUNAL DECISION.
>
> I THEREFORE WISH TO APPEAL THE PANEL'S DECISION TO PLACE CONDITIONS ON MY PRACTICE."

97. It is therefore clear that central to the Second Appeal is the Appellant's contention that the original 2019 decision was wrong.

98. There are a number of problems with this ground of appeal which mean that it must fail.

99. The first difficulty is that the Appellant sought to appeal the 2019 decision in her First Appeal, which was dismissed by consent. She cannot now try and appeal it all over again (which in substance is what she is trying to do in Ground 1). Furthermore, for the reasons I gave earlier, she would be out of time for an appeal of the original 2019 decision even if she had not already tried to appeal. It is, in short, too late to challenge that decision.

100. *Newley v General Medical Council* [2021] EWHC 1538 (Admin) was an appeal under s 40 of the Medical Act 1983 against a decision of the Medical Practitioners Tribunal (the review tribunal), made on 15 April 2020 following a review hearing. The review tribunal decided that Dr Newley's fitness to practise remained impaired by reason of his misconduct and imposed conditions on his registration as a doctor for a period of 24 months. Dr Newley appealed against both the findings of impairment and the sanction. An earlier appeal along the same lines had been dismissed by Lang J. Steyn J said at [46]:

> "This part of his appeal fails, fundamentally, because this is not an appeal against the 2019 tribunal's determination. First, it is not the decision appealed against identified in the Appellant's Notice. Secondly, an appeal against the 2019 tribunal's decision filed on 20 May 2020 would have been long out of time."

101. The second problem for the Appellant is that a statutory review of the type which was carried out in February 2022 under the SWR cannot revisit or reopen the findings of fact made by the original Panel which made the disciplinary order in question. The February 2022 Panel therefore did not err.

102. The principal purpose of a review is to determine whether the social worker's fitness to practice is still impaired and whether the order in question should remain in force. It is not to decide all over again that which has already been decided when the order was imposed. In *Khan v General Pharmaceutical Council* [2017] 1 WLR 169, the Supreme Court referred at [31] to 'the generally accepted conception of a review as a vehicle for monitoring the steps taken by the registrant towards securing professional rehabilitation.' It rejected the submission that a review panel could decide that an original panel's sentence had been too lenient. The Court said at [27]:

> "… the focus of a review is upon the current fitness of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of the suspension. The review committee will note the particular concerns articulated by the original committee and seek to discern what steps, if any, the registrant has taken to allay them during the period of his suspension. The original committee will have found that his fitness to practise was impaired. The review committee asks: does his fitness to practise remain impaired ?"

103. Along the same lines, in *Newley*, [56], Steyn J said:

> "56. The second part of the appellant's grounds of appeal is that the review tribunal was wrong not to correct the alleged errors in the 2019 tribunal's determination by reference to the evidence to which I have referred. In my judgment, this submission misapprehends the statutory scheme. It was not the role of the review tribunal to act as

> if it were an appellate tribunal with powers to revisit findings made by the 2019 tribunal and upheld on appeal by the High Court."

104. Steyn J then referred to what Yip J said in *Yusuff v General Medical Council* [2018] EWHC 13 (Admin), [20], namely:

> "20. I conclude having reviewed all the relevant authorities that at a review hearing:
>
> a. The findings of fact are not to be reopened;
>
> b. The registrant is entitled not to accept the findings of the Tribunal;
>
> c. In the alternative, the registrant is entitled to say that he accepts the findings in the sense that he does not seek to go behind them while still maintaining a denial of the conduct underpinning the findings;
>
> d. When considering whether fitness to practise remains impaired, it is relevant for the Tribunal to know whether or not the registrant now admits the misconduct;
>
> e. Admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it;
>
> f. If it is made apparent that the registrant does not accept the truth of the findings, questioning should not focus on the denials and the previous findings;
>
> g. A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in looking at impairment."

105. Thus, Steyn J concluded at [58]:

> "58. The review tribunal made no error in rejecting the appellant's invitation to reopen findings of fact made by the 2019 tribunal …"

106. There are other decisions to the same effect: see, eg, *Obukofe v General Medical Council* [2014] EWHC 408 (Admin), [26]; *Kataria v Essex Strategic Health Authority* [2004] 3 All ER 572, [20], [24], [25], [27]-[29]. In the latter case Stanley Burnton J said at [29]:

> "29. … It would be most unfortunate if a subsequent tribunal of equal standing to the first tribunal were required to hear and to rule on contentions that the first

> tribunal procedure had been unfair, that its discretions had been exercised unreasonably (e.g. that an adjournment should have been granted), that its proceedings had been irregular, or that any of its findings of fact or its decision was incorrect. It is most unlikely that Parliament intended this."

107. It follows that I reject Ground 1. The Respondent again made submissions that I should strike it out, but it suffices simply to say that it fails.

108. I turn to Ground 2 and the proportionality of the continuation of the CPO in February 2022. The February Review Panel's decision and reasons on current impairment began at [42] of its decision:

> "42. In considering the question of current impairment:
>
> - The panel had regard to all of the documentation before it, including the employment testimonials submitted by Ms Arkorful.
>
> - The panel also had regard to the submissions made on behalf of Social Work England and Ms Arkorful and the advice given by the Legal Adviser.
>
> - The panel undertook a comprehensive review of the final conditions of practice order in light of the current circumstances.
>
> - The panel took into account the decision and reasons of the panel which conducted the final hearing, whilst exercising its own judgement in relation to the matters to be determined.
>
> - The panel was mindful of Social Work England's overarching objective of the protection of the public, which, in s 37(2) of the Children and Social Work Act 2017, is defined as comprising (i) protecting, promoting and maintaining the health, safety and well-being of the public, (ii) promoting and maintaining public confidence in social workers and (iii) promoting and maintaining proper professional standards for social workers.
>
> 43. The panel noted that, prior to the present proceedings, Ms Arkorful had practised as a social worker for sixteen years without any regulatory findings against her.
>
> 44. However, the panel considered that the findings made against Ms Arkorful at the final hearing were serious. In this regard, the panel noted that, notwithstanding that certain allegations had not been proved or had only been

proved in part, the panel conducting the final hearing had nevertheless found significant failings in Ms Arkorful's record-keeping, which, in turn, had potentially exposed young and vulnerable service users to a risk of harm.

45. The panel agreed with Mr O'Donoghue [counsel for the Appellant] that the proven failings in Ms Arkorful's practice were remediable. However, the panel did not consider that the evidence before it at this review indicated that any significant remediation had occurred. In particular, the panel had no evidence which showed that, since the final hearing, Ms Arkorful had demonstrated her ability to keep full, accurate and timely records whilst working in social work or in a related field, whether in a voluntary or paid capacity. The panel did not consider that the passages regarding record-keeping in Ms Arkorful's written statement were an adequate substitute for such evidence, bearing in mind Social Work England's overarching objective of the protection of the public. The panel recognised that a conditions of practice order could affect Ms Arkorful's ability to obtain work as a social worker but, equally, it was aware that many social workers had been able to work successfully under both interim and final conditions of practice orders.

46. Similarly, the panel derived only limited reassurance from the references provided by Ms Arkorful. In this regard, it noted that those references were undated or pre-dated the final hearing or were based the referee's experience of working with Ms Arkorful before that hearing. Moreover, those which were undated made no mention of the referee's being aware of the findings made in respect of Ms Arkorful at the final hearing. In addition, although the references referred to Ms Arkorful's qualities as a social worker and her supportive nature, the observations in them regarding her record-keeping were limited.

47. The panel considered that Ms Arkorful's written statement evidenced some insight on her part, but this was still at an embryonic stage. In particular, her statement did not show any deep reflection on the potential effects of her misconduct on service users, colleagues, the social work profession and the public's perception of it. In addition, this limited insight appeared to have only emerged immediately before the present hearing.

48. Accordingly, given the apparent lack of insight and remediation on the part of Ms Arkorful, the panel considered that there was still a high risk of her

misconduct being repeated and that, accordingly, her fitness to practice remained impaired in terms of the need to protect the health, safety and well-being of the public and, in particular, of young and vulnerable service users.

49. In addition, the panel considered that an informed and reasonable member of the public who was aware of the findings against Ms Arkorful and of her apparent lack of insight and remediation, would be very concerned if she were allowed to practice without restriction. The panel therefore considered that Ms Arkorful's practice remained impaired in terms of the need to maintain public confidence in social workers.

50. Similarly, the panel considered that professional standards would be compromised if Ms Arkorful were able to practice without restriction notwithstanding the findings made at the final hearing and her failure to remediate the deficiencies in her practice which had led to those findings. The panel therefore considered that Ms Arkorful's practice remained impaired in terms of the need to maintain proper professional standards for social workers."

109. Thus, the Panel said at [51]-[53]:

"51. Given the seriousness of the findings against Ms Arkorful and the risk of her misconduct been repeated (as, in both cases, mentioned in the paragraphs above on Impairment), the panel considered that some form of restriction on her practice was required in order to enable her to practice safely. Accordingly, the panel considered that making no order or making a warning order were not appropriate options in the present case.

52. However, the panel was of the view that that Ms Arkorful's proven failings were, in principle, remediable and considered that a further conditions of practice order would facilitate such remediation and provide evidence of it in the form of supervisory reports. For the same reason, the panel considered that a suspension order would be disproportionate, as it would not offer Ms Arkorful the opportunity to remediate her practice and demonstrate its remediation but, on the contrary, it would be likely to result in her becoming de-skilled. The panel therefore decided that a further conditions of practice order was the appropriate and proportionate order.

53. In terms of duration, the panel noted Mr O'Donoghue's submissions regarding the period for which

> Ms Arkorful had been subject to the current conditions of practice and his request for any new conditions of practice order to be limited to a period of six months. The panel considered that this period was too short to provide an adequate opportunity to Ms Arkorful of demonstrating that her failings in record-keeping had been remedied. However, the panel considered that a conditions of practice order for a period of nine months would be adequate for that purpose."

110. I consider that the Appellant's challenge to the decision to (in effect) extend the CPO in February 2022 must fail for the following reasons.

111. Firstly, it is difficult for the Appellant to maintain that the February Review Panel was wrong to continue the CPO, because she indicated in her witness statement of 31 January 2022 for that hearing at [27A] that she was 'in general agreement' with its continuation, disputing only its duration, publication and details of the conditions. In principle, therefore, she agreed that that the CPO should continue.

112. The Respondent points out (Skeleton Argument, [70(1)]) that although in her 'Grounds for Appeal' document she contends that the continuation of the conditions 'cannot now in light of the passage of time be either proportionate or in the wider public interest nor are they necessary to maintain confidence', she copied and pasted most of her witness statement, but deleted the sentence at [27].

113. Secondly, I have to give considerable weight to the February Review Panel, as an expert adjudicative body in the field of social work. I set out the appellate test I have to apply earlier, and noted that this appeal is by way of review rather than re-hearing.

114. In *Bawa-Garba v General Medical Council* [2019] 1 WLR 1929, Lord Burnett CJ, giving the judgment of the court, said:

> "60. The GMC's appeal from the Tribunal to the Divisional Court pursuant to section 40A of MA 1983 [Medical Act 1983] was by way of review and not re-hearing. In that respect, it differs from an appeal pursuant to section 40. Sub-paragraphs 19.1(1)(e) and (2) of Practice Direction 52D expressly state that appeals under section 40 are to be conducted by way of rehearing. Appeals pursuant to section 40A are governed by CPR 52.21(1), which provides that, subject to the exceptions mentioned there, appeals are limited to a review of the decision under appeal. That technical difference may not be significant. Whether the appeal from the MPT is pursuant to section 40 or section 40A, the task of the High Court is to determine whether the decision of the MPT is 'wrong'. In either case, the appeal court should, as a matter of practice, accord to the MPT the same respect: *Meadow v General Medical Council* [2006] EWCA Civ 1390, [2007] QB 462 at [126]-[128].

> 61. The decision of the Tribunal that suspension rather than erasure was an appropriate sanction for the failings of Dr Bawa-Garba, which led to her conviction for gross negligence manslaughter, was an evaluative decision based on many factors, a type of decision sometimes referred to as 'a multi-factorial decision'. This type of decision, a mixture of fact and law, has been described as 'a kind of jury question' about which reasonable people may reasonably disagree: *Biogen Inc v Medeva Plc* [1997] RPC 1 at 45*; Pharmacia Corp v Merck & Co Inc* [2001] EWCA Civ 1610, [2002] RPC 41 at [153]; *Todd v Adams (t/a Trelawney Fishing Co) (The Maragetha Maria)* [2002] EWCA Civ 509, [2002] 2 Lloyd's Rep 293 at [129]; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325 at [46]. It has been repeatedly stated in cases at the highest level that there is limited scope for an appellate court to overturn such a decision …
>
> …
>
> 67. That general caution applies with particular force in the case of a specialist adjudicative body, such as the tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts: see *Smech* at [30]; *Khan v General Pharmaceutical Council* [2016] UKSC 64, [2017] 1 WLR 169 at [36]; *Meadow* at [197]; and *Raschid v General Medical Council* [2007] EWCA Civ 46, [2007] 1 WLR 1460 at [18]-[20]. An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide: *Biogen* at [45]; *Todd* at [129]; *Designers Guild Ltd v Russell Williams (Textiles) Ltd (trading as Washington DC)* [2001] FSR 11 (HL) at [29]; *Buchanan v Alba Diagnostics Ltd* [2004] UKHL 5, [2004] RPC 34 at [31]. As the authorities show, the addition of 'plainly' or 'clearly' to the word 'wrong' adds nothing in this context."

115. In *Sastry*, [108], Nicola Davies LJ identified the distinction between the approach of the court to appeals under s 40 of the Medical Act 1983 (which are by way of re-hearing), it its approach to appeals under s 40A appeals (which are by way of review), and endorsed the approach in *Bawa-Garba* as appropriate to the review jurisdiction on appeal.

116. On the question of insight – which the Review Panel referred to - Eyre J's judgment in *Hawker v The Health and Care Professions Council* [2022] EWHC 1228 (Admin) is helpful. He was dealing with a paramedic who was struck off the relevant register. The panel's decision involved an assessment of the paramedic's lack of credibility when giving evidence and denying misconduct, and of their finding that his attitude had not changed and he had not addressed the factors which had led to his misconduct. He lacked insight and presented a risk of repetition. Eyre J ruled on the issue in this way:

> "37. Considerable weight is to be attached to the judgement of a specialist tribunal as to the presence or absence of insight and as to the consequences of such presence or absence and those are 'classically matters of fact and judgment for the professional disciplinary committee in the light of the evidence before it' (per Lindblom LJ in *Doree* at [38]). This is in part because of the opportunity which the panel will have had to assess the evidence of the professional in question. It is also because the specialist knowledge of the members of such a panel means that they will be best-placed to form an assessment of what is and what is not required for such insight to be present. Again, however, the court on an appeal is not bound by the findings of such a panel. Thus the court can conclude that a panel erred in automatically equating a denial of the allegations with an absence of insight or in concluding in the particular circumstances that an absence of insight indicated that there was a risk of repetition (see *R (Abrahaem) v General Medical Council* [2004] EWHC 279 (Admin) per Newman J at [39]; *R (Onwuelo v General Medical Council* [2006] EWHC 2739 (Admin) per Walker J at [33] – [36]; and *R (Vali) v General Optical Council* [2011] EWHC 310 (Admin) per Ouseley J at [46]) . Although such a denial is not conclusive as to the lack of insight it can be indicative of a lack of insight or can mean that the panel has no material from which it can find that the professional in question has the necessary insight. Much will depend on the facts of the particular case and on the evidence actually advanced in each case. The questions of the presence or absence of insight and of the risk of a repetition of the conduct in question are distinct. They are, however, closely connected and an absence of insight can be a potent indication that there is a risk of repetition (see per Collins J in *R (Bevan) v General Medical Council* [2005] EWHC 174 (Admin) at [37] – [39] expressing those points rather more succinctly)."

117. Adopting this approach, there is no proper basis for me to interfere with the February Panel's decision on the basis that it was 'wrong'. It was an expert adjudicative Panel. The CPO was continued because of the Panel's expert judgement about what was needed to protect the health, safety and well-being of the public and, in particular, of young and vulnerable service users. It had all of the relevant matters in mind and

directed itself correctly. It bore in mind (and said so) that the CPO could affect the Appellant's ability to obtain work; but also said that it would not necessarily be an insuperable bar, because other social workers subject to conditions had been able to obtain work. The decision struck a fair balance between the impact on her, and the protection of the public.

118. I reject any suggestion that the continuation of the CPO was, in effect, a suspension order, because it was not. Conditions and suspensions are separate and distinct sanctions. The conditions imposed on the Appellant essentially amounted to a scheme of reporting, workplace supervision, a personal development plan and information exchange between the Appellant, SWE and any future employer.

119. I do not underestimate the effect that these proceedings have had on the Appellant and her career. However, SWE's overarching objective under the relevant legislation is the protection of the public (s 37(1) of the Children and Social Work Act 2017), and the purpose of the fitness to practise regime is the protection of the public (Ibid, s 44).

120. As with other professional statutory disciplinary schemes, when it comes to sanction, the protection of the public and/or public confidence in the social work profession is the 'essential issue' (*Bolton v Law Society* [1994] 1 WLR 512, 519) and was 'fundamental' and 'central' to the Panel's functions: *Watters v Nursing and Midwifery Council* [2017] EWHC 1888 (Admin), [33]. In an often quoted passage from *Bolton*, p519, Sir Thomas Bingham MR said:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence, for the individual and his family may be deeply unfortunate and unintended. But it does not make

> suspension the wrong order if it is otherwise right. The reputation' of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

121. This reasoning has been applied to social workers, who 'work with some of the most vulnerable members of society': *Anderson v Social Work England* [2020] EWHC 430 (Admin), [25].

122. A point made by the Appellant is that she has been subject to conditions 'way longer than the Panel envisaged in June 2019'. The Panel was aware that the order would be subject to review (see [149] of its decision), and thus could be extended for a further period or periods. But the issue for me is whether the February 2022 decision can be impugned, which it cannot.

123. The Appellant also complains that the full set of allegations have been published by SWE, including those not proved. However, SWE's statutory duty under the SWR is to ensure that the particulars of any orders and decisions made in fitness to practise proceedings, together with the reasons for them, and the particulars of any order made on review or appeal, are published as soon as reasonably practicable (reg 25(1)(c)).

124. It follows that I reject Ground 2.

125. In relation to the points made in the Outline Written Submissions prepared by counsel for the Appellant, I agree with the Respondent's response to them (Skeleton Argument, [72A] et seq).

126. The submissions allege at [19] that the conduct of the February Review was procedurally unfair. However, as I read them, the criticisms all appear to relate to the Original Panel's decision in 2019 and are accordingly irrelevant to a challenge to the February Review Panel's decision. Similarly, complaints about irrationality all appear to relate to the Original Panel's decision. I reject the other points, including the complaint about disproportionality.

127. For the avoidance of doubt, I have not overlooked the Appellant's 'Statement of Case', from July 2023, however as I have said, this largely consists of challenges to the Original Panel's decision in 2019 and hence is not relevant.

128. Accordingly, the Second Appeal is dismissed.

The Third Appeal

129. In its November 2022 decision the Review Panel noted at [6] that the Appellant had not attended the Review hearing and had not been represented. It gave reasons for proceeding in her absence. It noted at [11] that on the morning of the hearing she had spoken to SWE. The attendance note read:

> "A telephone attendance note of the call, which was before the panel, stated: 'Called Ms A Akorful (sic) to ask if she

was planning on attending the hearing today and she said 'no because I couldn't seek representation and I don't want to represent myself.' I advised that was OK and I would e-mail her the outcome later in the day. she was fine with this."

130. At [25] the Panel set out part of the submissions it had received from SWE:

> "'Social Work England invite the Panel to impose further Conditions of Practice Order, for a period of 9 months. Minor variations to the conditions of practice are proposed in order to align the wording with that of the updated Social Work England conditions bank. Further variations are proposed to conditions 10 and 11 to require the Social Worker to submit evidence without needing to resume social work practice. This will enable the Social Worker to gain appropriate evidence for future review hearings. It is submitted that the restriction remains necessary for the protection of the public, including the wider public interest.
>
> The Social Worker has not demonstrated any insight or reflected on the deficiencies in her practice since the last review hearing. The Social Worker has not submitted any evidence of CPD, although it is acknowledged that with the current wording of condition 11 there is no requirement for the Social Worker to do so until she resumes practice. Whilst the Social Worker has provided additional references, the referees have not shown an awareness of the regulatory proceedings.
>
> The Social Worker has not practised as a Social Worker since the imposition of the Order. The Social Worker has previously expressed encountering difficulties with finding employment owing to the Conditions of practice Order. However, the Social Worker has not provided any evidence of efforts made to seek employment since the last review hearing.
>
> A further 9 month Conditions of Practice Order would protect the public but also allow the Social Worker further opportunity to develop insight, provide evidence of remediation and keep herself updated with CPD and training. The Social Worker has expressed a desire to return to practice, and a further period of Conditions of Practice would afford her the opportunity to achieve this. Social Work England invite the Panel to find that the Social Worker's fitness to practise remains impaired in the in the absence of any evidence of remediation or insight.

> Social Work England therefore invite the Panel to impose further Conditions of Practice Order."

131. At [28] under the hearing 'Panel decision and reasons on current impairment' the Panel said this:

> "28. The panel heard and accepted the advice of the legal adviser.
>
> 29. In reaching its decision, the panel was mindful of the need to protect the public and the wider public interest in declaring and upholding proper standards of behaviour and maintaining public confidence in the profession.
>
> 30. In considering the question of current impairment, the panel undertook a comprehensive review of the final order in light of the current circumstances. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and previous review panel, together with Mr East's oral submissions.
>
> 31. At the outset, the panel considered that the findings found proved against Ms Arkorful at the final hearing were serious. In the main, these related to significant failings in Ms Arkorful's record-keeping, which, in turn, had potentially exposed young and vulnerable service users to a risk of harm.
>
> 32. The panel considered that the failings identified in Ms Arkorful's practice were capable of remedy.
>
> 33. The panel next considered whether Ms Arkorful had, in fact, remedied her failings. Having carefully considered the documentary material presented by Ms Arkorful at this hearing, the panel agreed with the findings of previous panels to the effect that, while there was some evidence of insight on her part, Ms Arkorful's insight was partial and still at an embryonic stage. No evidence had been presented to demonstrate deep reflection on Ms Arkorful's part as to the potential effects of her misconduct on service users, colleagues, the social work profession and the public's perception of it. The panel concluded that, while developing, Ms Arkorful still had a considerable way to go in terms of demonstrating full insight into her misconduct and its potential adverse effects on others.
>
> 34. In the panel's view, there had been no material change in respect of Ms Arkorful's remediation. In keeping with the previous final order review panel, this panel had no evidence which showed that, since the final hearing, Ms

> Arkorful had demonstrated her ability to keep full, accurate and timely records whilst working in social work or in a related field, whether in a voluntary or paid capacity. The panel did not consider that the passages regarding record-keeping in Ms Arkorful's written statement were an adequate substitute for such evidence, bearing in mind Social Work England's overarching objective of the protection of the public. Accordingly, the panel did not consider that the evidence before it at this review indicated that any significant remediation had occurred.
>
> 35. The panel also had regard to the references provided by Ms Arkorful for this review hearing. The panel considered that the references were of limited assistance. The panel noted that the references were undated or pre-dated the final hearing or were based on the referee's experience of working with Ms Arkorful before that hearing. Moreover, there was no mention made of the referee being aware of the findings made in respect of Ms Arkorful at the final hearing.
>
> 36. Accordingly, the panel considered that there was still a high risk of Ms Arkorful's misconduct being repeated and that her fitness to practice remained impaired in terms of the need to protect the health, safety and well-being of the public and, in particular, of young and vulnerable service users.
>
> 37. In addition, the panel considered that an informed and reasonable member of the public who was aware of the findings against Ms Arkorful and of her apparent lack of insight and remediation, would be very concerned if she were allowed to practise without restriction. The panel therefore considered that Ms Arkorful's practise remained impaired in terms of the need to maintain public confidence in social workers.
>
> 38. Similarly, the panel considered that professional standards would be compromised if Ms Arkorful were able to practise without restriction notwithstanding the findings made at the final hearing and her failure to remediate the deficiencies in her practice which had led to those findings. The panel therefore considered that Ms Arkorful's practise remained impaired in terms of the need to maintain proper professional standards for social workers."

132. At [39] et seq under the heading 'Decision and reasons on sanction' the Panel said:

> "39. Given the seriousness of the findings against Ms Arkorful and the risk of repetition identified, the panel considered that some form of restriction on her practice was required. Accordingly, the panel considered that making no order or imposing a Warning would be insufficient to protect the public and uphold the public interest.
>
> 40. However, in light of the panel's view that that Ms Arkorful's misconduct was, in principle, remediable, the panel considered that a further Conditions of Practice Order would facilitate the development of Ms Arkorful's insight and enable her to provide more detailed and directly relevant evidence of remediation.
>
> 41. The panel considered that a Suspension Order would be disproportionate, as it would not offer Ms Arkorful the opportunity to remediate her practice and demonstrate insight but, on the contrary, such a measure would be likely to result in her becoming de-skilled. The panel therefore decided that a further Conditions of Practice Order for a period of 9 months was the appropriate and proportionate order. The panel agreed with the draft conditions which contained minor variations from the current conditions, the reasons for which had been set out in Social Work England's written submissions and which were contained in the notice of substantive order review letter dated 4 October 2022.
>
> 42. The panel recognised that a Conditions of Practice Order could affect Ms Arkorful's ability to obtain work as a social worker but considered that this sanction was proportionate and was sufficient to protect the public and uphold the public interest."

133. For the reasons given in relation to the Second Appeal, which raised essentially the same grounds of appeal as on this appeal, I reject the Third Appeal. It was not the Panel's function to re-open the findings of fact from 2019. And there is no basis for concluding that the Panel's expert assessment of what was necessary to protect the public – and which I have to have deference for – was disproportionate or otherwise wrong.

Conclusion

134. It follows that both the Second and Third Appeals are dismissed. Whilst preparing this judgment I learned that the Appellant's conditions were further extended by a Review Panel in August 2023, shortly after the appeal hearing before me, and that there is to be a further review hearing in February 2024.