Neutral Citation Number: [2024] EWHC 3 (Admin)

Case No: AC-2023-MAN-000116

IN THE HIGH COURT OF JUSTICE

KINGS BENCH DIVISION

ADMINISTRATIVE COURT AT MANCHESTER

Manchester Civil Justice Centre

Date handed down: 2 January 2024

Before His Honour Judge Stephen Davies sitting as a High Court Judge

Between :

ORLA MAIRE GLEESON	**Appellant**
- and -	
SOCIAL WORK ENGLAND	**Respondent**

Rory Dunlop KC (instructed via direct access) for the **Appellant**

Peter Mant (instructed by **Bate Wells LLP, London EC4**) for the **Respondent**

Hearing date: **11 December 2023**

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APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10:30am on 2 January 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

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A. Introduction and summary of decision

1. The appellant (Ms Gleeson) is a social worker, first registered in 2012 and first employed by Wigan Council ("Wigan") in 2014. She was the subject of fitness to practise proceedings brought by the professional regulator, now Social Work England (SWE), which was heard by a fitness to practise panel ("the panel") over 9 days from Monday 9 January to Thursday 19 January 2023. This process resulted in a finding that her fitness to practise was impaired by reason of misconduct and a finding that the appropriate sanction was a removal order.

2. For the reasons which I set out in detail in this judgment my decision is that the allegations of misconduct found proved against Ms Gleeson in relation to Person A must be set aside, whereas the allegations of misconduct found proved against Ms Gleeson in relation to Person B must stand (as does the unchallenged finding of inappropriate postings on social media), with the consequence that I will hear further submissions as to the appropriate disposal, whether remittal or otherwise.

B. The appeal

3. Ms Gleeson appeals to the High Court against the panel's findings, as she is entitled to do as of right, and the appeal was heard by me on 11 December 2023. She was represented by Mr Rory Dunlop KC and the respondent was represented by Mr Peter Mant. I am grateful to them both for their excellent written and oral submissions. I reserved judgment and this is my judgment.

C. The allegations

4. The allegations notified to Ms Gleeson in October 2022 and put before the panel related to Ms Gleeson's personal life during the period of her regulation as a social worker and, specifically: (i) particular aspects of her alleged conduct during successive relationships with two persons (known

below as Person A and Person B to protect their privacy, so that for convenience I will adopt the same nomenclature); and (ii) social media postings made by her following her suspension by Wigan after complaints made by Person B.

5. In more detail, as particularised in the statement of case, the allegations were as follows. For convenience, I also indicate at this stage which allegations were found proved and which were found not proved.

(1) Between 2012 – 2015 whilst registered as a social worker you:

(a) Were emotionally abusive to Person A in that you,

(i) Often became aggressive towards Person A. (I shall refer to this as "the aggressive emotional abuse allegation".) **Found proved**.

(ii) Said to Person A in 2012 'I'm thinking of ways I could kill you and get away with it' or words to that effect. (The "I could kill you allegation".) **Found proved**.

(iii) Said to Person A that no-one would believe her if she reported what was happening between the two of you as she was an actor and you were a child protection officer or words to that effect. (The "no one will believe you allegation".) **Found not proved**.

(iv) Said to Person A in 2013 that in order to resume the relationship that she must write a letter to you setting out what she had done to you and taking full responsibility for her actions or words to that effect. (The "2013 letter allegation".) **Found not proved**.

(b) Used physical force on Person A in that you,

(i) Punched Person A in the stomach in or around April 2012. (The "first assault allegation".) **Found not proved**.

(ii) Physically pushed Person A's head against the wall on or around 23 July 2012. (The "second assault allegation".) **Found not proved**.

(2) Between 2016 – 2017 whilst registered as a social worker you:

(a) Were emotionally abusive to Person B in that you,

(i) Told Person B that she was stupid. ("The "stupidity allegation".) **Found not proved**.

(ii) Treated Person B as subordinate to you in that you regularly expected Person B to put your needs first. (The "subordination allegation".) **Found not proved**.

(b) Used physical force on Person B in that you;

(i) Pulled Person B out of bed on 30 July 2016. (The "pull out of bed allegation".) **Found proved**.

(ii) Pushed Person B down the stairs on the 30 July 2016. (This was amended during the hearing to an allegation that Ms Gleeson attempted to push Person B down the stairs.) (The "push downstairs allegation".) **Found proved**.

(iii) Bent Person B's thumb backwards. (The "bent thumb allegation".) **Found not proved**.

(3) In March 2019 you posted and/ or commented inappropriate and/or derogatory material on social media as set out in Schedule 1. (The "inappropriate postings allegation".) **Found proved**.

6. Schedule 1 identified the following allegations:

(i) A screenshot of the letter suspending your employment with the words 'Discriminatory. Bias. Homophobia. See you soon'.

(ii) '[Local Authority 1] you refused to allow my partner into the meeting!!'

(iii) 'When I get my apology from you [Local Authority 1] we will be right!'

(iv) Disgusting 19 years working for good! #[Local Authority 1] bias discrimination and no the woman claiming shite is trying to cling onto her job (bringing a looked after child to bar whilst drunk, sending naked pics to a father whilst doing an assessment, robbing the council of expenses) she still works there! Under the woman that is investigating me!'

(v) 'Just for clarity the ex partner who's hooked up with the other nut case. She took a CSE child out to a bar after downing a bottle of wine, she brought the kid to a bar wanting more, the same woman sent naked photos to a father, robbed the council of expenses, then claims she was abused by me!...to get away with it!!this woman is trying to save her job! Shite happens you ain't getting away with this!!!'

D. The case and the decision in summary

7. The decision was made in various stages over the course of the hearing but, for convenience, has been produced in one compendious document. It is a lengthy (43 pages) and detailed document, which I shall need to consider in some detail. It is currently available on the SWE website, albeit with private paragraphs redacted. Regardless of my decision to allow the appeal in relation to the findings of misconduct in relation to Person A I should like to pay tribute to the enormous amount of hard work which went into the decision and the care which the panel members obviously took in making their findings.

8. The essential position can be summarised in this way.

9. Person A had no connection with Ms Gleeson's profession or employment. The relationship between the two began around the end of 2011 and appears to have ended initially and acrimoniously around late 2012. Both were single parents, both with boys under 18, although Ms Gleeson's son was older, 17 years in 2014. However, there was continued contact subsequently, with some attempts at reconciliation which did not succeed, and the relationship finally ended around early 2015.

10. Person B was a family intensive support worker also employed by Wigan. The relationship began around December 2015 and continued until around early 2017, also ending acrimoniously.

11. It was not seriously disputed that both relationships were volatile.

12. The panel heard evidence from Person A and Person B and from Ms Gleeson. Ms Gleeson denied all of the allegations made by Person A and said that these allegations had been made as a counter to allegations of harassment made by her against Person A. She denied all of the allegations made by Person B and said that these had been made because Person B had been the subject of disciplinary proceedings herself. She admitted making the postings and that they were inappropriate, but said that they were true and a genuine reflection of her feelings at the time. She admitted that she had struggled with alcohol during the course of these relationships at times of immense stress and had also received some counselling due to other personal issues in her life.

13. The panel also heard evidence from Ms Gleeson's son. He supported her account of her relationship with Person A, but was unable to say much about the relationship with Person B.

14. The panel also received documentary evidence, including contemporaneous messages passing between the various witnesses and others and, importantly, contemporaneous police reports of call-outs.

15. In summary, it can be seen from the findings in relation to the various allegations that the serious allegation found proved in relation to Person A was that of aggressive emotional abuse, whilst the two allegations of assault were found not proved, whereas and conversely in relation to Person B the emotional abuse allegations were found not proved, whilst two of the three allegations of assault were found proved. Thus, the grounds of appeal focus on the aggressive emotional abuse allegation in relation to Person A and the two assault allegations in relation to Person B, as well as on the findings in relation to misconduct, impairment and sanction.

16. The panel comprised three members and was assisted by a legal adviser.

17. At the hearing both SWE as the regulator and Ms Gleeson as the respondent were represented by advocates, Ms Ferrario and Mr Walker respectively. A full transcript of the hearing has been provided.

E. The decision in more detail

Introductory sections

18. The decision began with an introductory section addressing certain preliminary matters, including the detail of the allegations and the panels' decision on SWE's application to amend one of the allegations, running from paragraphs 1 to 30. It continued with a lengthy summary of evidence adduced by the parties from paragraphs 31 - 77

The panel's finding and reasons on the facts

19. This is a detailed section from paragraphs 78 to 185. In this section, the panel began in paragraphs 78 to 84 by recording the submissions made by each advocate and the advice given by the legal adviser, including advice about the burden of proof, the approach to assessing the allegations and the evidence, oral and documentary.

Findings in relation to the allegations regarding Person A

20. From paragraph 85 onwards the panel dealt in detail with the allegations in relation to the relationship with Person A. They recorded that the accounts given by Person A and Ms Gleeson were "diametrically opposed, each blamed the other". Later, they concluded at paragraphs 127 and 128 that they had approached both Person A's evidence and Ms Gleeson's evidence "with some caution" for the reasons given in those paragraphs. In the case of Person A it was because: (a) she had alleged a conspiracy between Ms Gleeson and the authorities, including the police, to explain what she said were omissions from the police reports which, it is to be inferred, the panel found unconvincing; and (b) she had also written things in the 2013 letter which she admitted to the panel were untruthful. In the case of Ms Gleeson it was because of what they considered to be inconsistencies between her evidence and the police reports. At paragraph 87 and again at paragraph 128, they said that they "therefore considered that it was important to consider the available contemporaneous documents, and in particular the police reports and messages and texts sent at the time, and subject these to scrutiny with the oral evidence".

21. It is clear from paragraph 130 that they placed particular reliance on their analysis of the police reports and from paragraph 131 that they considered that the 2013 letter from Person A, which as they noted she had admitted was partly untruthful, supported her account.

22. In paragraph 132 they said that they "concluded that, taking all the evidence into account including in particular the police reports, on the balance of probabilities [they] preferred and accepted Person A's evidence as to the way that Ms Gleeson had acted during the course of the relationship".

23. In paragraph 133 they said that they "accepted Person A's evidence that Ms Gleeson had become aggressive towards Person A over the course of their relationship between 2012 and 2015, including in the events of 01 October 2012, 04 January 2014 and 8 February 2015. [They] concluded that the evidence demonstrated that this had 'often' occurred".

24. In paragraph 136 they said that they "considered that upsetting the emotions of Person A on the basis of often being aggressive towards her amounted to emotional abuse. Person A and Ms Gleeson both gave evidence that this had been a personal relationship and it ran counter to that for Ms Gleeson to have behaved in the manner she had, even if Person A had not acted in a completely exemplary fashion".

25. They therefore concluded at paragraph 137 that allegation1(a)(i) was proved.

26. They also found allegation 1(a)(ii) (the I could kill you allegation) proved. In their reasons at paragraphs 138 – 142 they gave three reasons: (a) the very specific evidence given by Person A of an unusual statement; (b) that "it was consistent with its finding that Ms Gleeson was often aggressive towards Person A that she said words of this nature"; and (c) the reference to this threat in the 2013 letter.

27. They did not, however, find allegation 1(a)(iii) (the no one will believe you allegation) proved (paragraphs 143 - 146), on the basis of a lack of detail as to what was said and the lack of corroboration.

28. Nor did they find allegation 1(a)(iv) (the 2013 letter allegation) proved, on the basis of their close analysis of its contents and the surrounding evidence (paragraphs 147-149). They said that "on its face, the letter appeared to be summative of the relationship up to that point" and that, even though

Person A "now acknowledged that the admission of responsibility contained in the letter was untrue", they were not persuaded that Ms Gleeson has requested her to write the letter.

29. Nor, importantly, did they find allegation 1(b)(i) (the first assault allegation) proved, on the basis of Person A's inconsistent evidence on the point and her failure to report it to the police (paragraphs 150 – 153).

30. Finally, they did not find allegation 1(b)(ii) (the second assault allegation) proved, on the basis of their evaluation of the credibility of Person A's evidence on the point and the lack of any evidence of any complaint to her family (the allegedly serious and unprovoked assault having happened, she said, without any provocation on the morning of her mother's 60th birthday celebration) or to the police. This was notwithstanding her insistence that "her recollections were correct because she relied on hypnotherapy that she had undertaken, which allowed her to recollect events".

Findings in relation to the allegations regarding Person B

31. These were addressed at paragraphs 150 – 179.

32. The panel found the stupidity and the subordination allegations not proved, on the basis that whatever was said did not amount to emotional abuse.

33. The panel found the pull out of bed allegation proved. They considered the oral evidence of Person B, Ms Gleeson and her son as well as the police report and considered that: (a) the credibility of the evidence of Ms Gleeson and her son was undermined by the panel's assessment that their evidence contradicted the police report; (b) on balance they accepted Person B's evidence as more probable, notwithstanding the evidence of her behaving oddly in one respect when the police arrived.

34. The panel also found the push downstairs allegation proved for the same reasons, in particular referring to the detailed account given by Person B and its consistency with the police report.

35. The panel found the bent thumb allegation not proved, on the basis of Person B's lack of a detailed recollection of the incident.

Findings in relation to the inappropriate postings allegation

36. These were addressed at paragraphs 180 - 185. Ms Gleeson admitted having made these postings and that they were inappropriate as a way of pursuing her grievances with Wigan, but contended that she had a genuine belief in what she had said and disputed that they were inappropriate in the language used. The panel found the allegations proved on the basis that the postings contained inappropriate material and, judged objectively, the allegations were disparaging of the Council and of Person B with the use of some foul language.

The panel's finding and reasons on grounds

37. In this section, beginning at paragraph 186, the panel considered whether the facts found proved amounted to misconduct. They recorded the submissions of the respective advocates and recorded the advice of the legal adviser at paragraph 203 that:

"… the matter of misconduct was for its judgement, not involving a burden or standard of proof. To find misconduct, as a statutory ground, the panel had to consider the findings of fact amounted to 'serious professional misconduct'. This embraced conduct both within professional practise, but also outside it in an appropriate case, for example where disgrace was brought on the profession. The question as to whether the conduct was 'serious' was a matter for the panel, with regard to the HCPC standards relevant at the time. The panel should consider the findings in paragraphs 1, 2 and 3 of the Allegation separately."

38. The panel then referred to three professional standards current at the time of the allegations concerning Person A and Person B, namely:

Standard 3 (2012): "You must keep high standards of personal conduct, as well as professional conduct. You should be aware that poor conduct outside of your professional life may still affect someone's confidence in you and your profession."

Standard 9.1 (2016): "You must make sure that your conduct justifies the public's trust and confidence in you and your profession."

Standard 3.1 (2017): "Understand the need to maintain high standards of personal and professional conduct."

39. The panel gave reasons for concluding that the allegations found proved against Ms Gleeson both in relation to Person A and Person B amounted to serious professional misconduct, notwithstanding that they related to her private rather than her professional life.

40. As regards Person A, that was on the basis of the repeated emotional abuse, often through aggressive behaviour, and causing the police to be called, Person A's neighbour to be alarmed, and Ms Gleeson's son being drawn in, with Person A's son also possibly having been exposed. They also considered (paragraph 208) that Ms Gleeson had not withdrawn from the relationship once it was apparent it was volatile.

41. As regards Person B, that was on the basis that although it related only to one evening it was a serious event which, as regards the attempted push down the stairs, could have had serious consequences. They considered that the behaviour could not be excused by her grief following a bereavement.

42. As regards the inappropriate postings conduct they concluded that it was inappropriate and irresponsible conduct with a direct bearing on her professional relationship with Wigan and amounted to serious professional misconduct.

The panel's finding and reasons on current impairment

43. Having found misconduct the panel continued at paragraph 219 to consider whether this demonstrated that Ms Gleeson's fitness to practise was currently impaired, taking into account the then current guidance. They recorded the respective submissions of the advocates. They recorded Mr Walker's realistic acceptance that given the misconduct finding the panel was likely to find impairment in the wider public interest. However, he submitted that it would be wrong to find a risk of repetition on the basis of a lack of reflection and insight, in circumstances where Ms Gleeson had denied the allegations

and in circumstances where there was no evidence of recurrence since the events in question had occurred. They recorded the advice from the legal adviser that it should consider "whether it could say that the misconduct, if found, was capable of remedy, had been remedied and was highly unlikely to be repeated [and] whether a finding of impairment was necessary in order to maintain public confidence in the profession and its standards".

44. The panel considered that the misconduct in relation to Person A and Person B was "difficult to remediate but was potentially remediable" and that there was no evidence of any remediation. Even taking into account the passage of time since the allegations and the personal references and testimonials the panel considered that there was a "concerning pattern of behaviour" over an extended period. Given this, the evidence of some escalation of behaviour as regards Person B, given that in their view the mitigation presented did not explain or excuse, given the lack of insight and the absence of demonstration of positive remediation, they concluded that they "could not be satisfied that Ms Gleeson's past misconduct was highly unlikely to be repeated". They made a similar finding in relation to the unacceptable postings and, thus, found current impairment.

The panel's decision on sanction

45. Finally, the panel had to make their decision on sanction, which they did in the concluding section at paragraphs 236 to 286, taking into account the relevant sanctions guidance as revised in December 2022 (referred to in the decision as the "SG"). They referred to the character witnesses called by Ms Gleeson, two of whom were personal friends and the third being a professional colleague. Again, they recorded the submissions from the respective advocates. They recorded the advice from the legal adviser that: "it should consider all the evidence, the submissions and its findings. It should refer to the SG issued by Social Work England and updated in December 2022. The panel had to impose the minimum sanction, if any, which met the level of impairment and which was sufficient to meet the overarching objective of protecting the public. The panel should balance Ms Gleeson's interests with the public interest".

F. The statutory right of and basis for allowing an appeal

46. It is common ground that: (a) under Schedule 2 of the Social Workers Regulations 2018 a social worker may appeal to the High Court against a final order made by the adjudicators, which may be one of warning, conditions, suspension or removal; (b) on appeal the court may (i) dismiss the appeal, (ii) quash the decision, (iii) substitute a different decision, or (iv) remit.

47. It is also common ground that Part 52 of the Civil Procedure Rules apply to such an appeal, so that the test on appeal is whether the decision of the panel was: (a) wrong or (b) unjust because of serious procedural or other irregularity (CPR, r 52.21(3)).

G. The grounds of appeal

48. I will set out the grounds of appeal, which are admirably succinct, in full:

"The decision of the Respondent to make a removal order against the Appellant was wrong and/or unjust because of a serious irregularity. In particular:

1. It was wrong and unfair for the Respondent to investigate and determine whether the Appellant was 'emotionally abusive' and/or 'often … aggressive' in non-professional relationships. It was wrong as the Respondent did not have jurisdiction to consider such charges. It was also unfair as the charges were inadequately particularised.

2. In the alternative to 1, if there was jurisdiction and it was fair to investigate and determine such allegations, the chair's interventions, restricting the questions which the Appellant's representative was permitted to ask Person A about their relationship, were wrong and/or irregular. It was unjust to hold a hearing into whether the Appellant was 'emotionally abusive' and/or 'often aggressive' towards Person A while limiting the questions that could be asked about the nature of the relationship between the Appellant and Person A.

3. The Respondent was wrong to find that the Appellant's emotional conduct, in non-professional relationships, was professional misconduct.

4. It was wrong and unfair to permit the Respondent materially to amend Allegation 2(b)(ii) after the witnesses had given evidence. This led to injustice as a finding of misconduct was made in respect of an allegation the Appellant had no fair opportunity to consider or provide evidence in relation to.

5. In their findings on Allegations 2(b)(i)-(ii), the Respondent failed to have regard to (a) the evidence of the Respondent's good character, (b) the fact that no charges were brought against the Appellant in relation to the incident, despite police attendance, (c) the fact that Person B was heavily intoxicated on the night in question and (d) the fact that Person B accepted, in cross-examination, that her recall of the order of events on the relevant evening was wrong.

6. The Respondent was wrong to accept and/or failed to give adequate reasons for accepting the evidence of Persons A and B in relation to the allegations, in spite of the inconsistencies between their evidence and earlier documentary evidence.

7. It was wrong and procedurally unfair to treat the Appellant's denial of the allegations against her as evidence of lack of insight which justified a finding of misconduct and the most serious sanction."

H. My approach to the grounds of appeal

49. In my judgment it is most helpful to consider the grounds thematically by reference to: (a) those specifically relating to Person A; (b) those specifically relating to Person B; and (c) ground 7, relating to both. That is because the ultimate questions for me are:

(a) whether or not the grounds in relation to the findings of fact in relation to Person A are made out and, if so, on what basis and with what consequences;

(b) whether or not the grounds in relation to the findings of fact in relation to Person B are made out and, if so, on what basis and with what consequences; and

(c) to the extent necessary and/or appropriate in the light of my conclusions on (a) and (b), whether the ground in relation to the decision on misconduct and sanction is made out and, if so, on what basis and with what consequences.

I. The grounds of appeal as regards Person A

Ground 1

50. Given the panel's findings ground 1 only applies in relation to Person A, and only then in relation to the aggressive emotional abuse allegation and the I could kill you allegation, since the other allegations of emotional abuse made in relation to Person A and Person B were found not proved.

51. It raises two separate questions: (1) whether or not emotional abuse within a private relationship can fall within the category of misconduct so as to give the panel jurisdiction to find a social worker's fitness to practise impaired; and (2) whether the charges were adequately particularised.

52. Question (1) is closely associated with ground 3, which alleges that the panel was wrong to find that Ms Gleeson's emotional conduct, in non-professional relationships, was professional misconduct. As Mr Mant submitted, it makes much more sense to consider the question as to whether the conduct complained of fell within the category of misconduct when addressing the panel's actual findings, rather than considering it as a preliminary question of jurisdiction, in circumstances where: (a) no submission based on jurisdiction or abuse was made to the panel at the outset or, thus, became the subject of a preliminary determination; and (b) it is more favourable to Ms Gleeson to consider the issue by reference to whether the decision was "wrong" on the findings actually made, rather than to consider, in the abstract, whether the panel had, or ought to have exercised, jurisdiction even to embark on the process.

53. Furthermore, given that ground 6 alleges that the panel was wrong to accept and/or failed to give adequate reasons for accepting the evidence of Person A in relation to the allegations found proven, it appears to me that it is most sensible to address this question once I have addressed ground 6 and thus once it is clear to what extent, if at all, the panel were justified in finding such allegations proven.

54. Question (2) raises the issue of the requirement for proper particularisation.

55. As to this, it is common ground that an allegation of professional misconduct must be adequately particularised so as to give the registrant a fair opportunity to prepare their defence; see for example the decision of Ouseley J in Squier v GMC [2015] EWHC 299 (Admin) at paragraph 55, cited by Mr Dunlop.

56. It is also common ground that this issue may arise if an application is made before the substantive fitness to practise hearing commences, such as occurred in Squier or, as in this case, on appeal. A good example of the latter case is the decision of Blair J in Hutchinson v General Dental Council [2008] EWHC 2896 (Admin) cited by Mr Mant, where at paragraph 18 the judge observed (I

paraphrase) that in some cases the nature of the charges may make it impossible to be precise, but that nonetheless they should be as precise as the nature of the charges allow and that the fundamental question in such a case is whether a fair trial was possible and took place. He also noted at paragraph 19 that in such a case the tribunal should "reach its findings on the evidence with possible prejudice to the practitioner caused by factors such as delay and lack of specificity firmly in mind".

57. In this case the complaint is that the aggressive emotional abuse allegation, being an allegation that Ms Gleeson was emotionally abusive to Person A between 2012 to 2015 by often becoming aggressive towards her, was hopelessly imprecise and unfair because it was impossible for Ms Gleeson fairly to defend herself against such an allegation.

58. If that was all that was provided by way of allegation, I would agree. However, as Mr Mant submitted, particulars were given of each of the allegations in the statement of case and in the supporting witness statements where cross-referenced and, in relation to the aggressive emotional abuse allegation, contained the following specific allegations:

(i) paragraph 21: when Person A went to see Ms Gleeson at the weekends, she was always drunk and aggressive towards her (paragraph 5, Person A's witness statement) and was a nasty drunk with a nasty side whilst drunk (paragraph 3 Person A's witness statement).

(ii) paragraph 22: when the police attended on 1 October 2012, following a telephone call from Person A, the police report referred to a "verbal altercation with partner no offences". Reference was also made to paragraph 9 of Person A's witness statement, which stated "On 1 October 2012 we were nine months into our relationship and we had already split up. I cannot recall exactly what happened on this date but the police report can be seen at Exhibit MA/1. This was not the first incident of aggression, however the police were not always called as I was frightened of Orla".

(iii) paragraph 23: during the final stage of their relationship in January 2014, a further incident occurred during which Ms Gleeson became drunk and argumentative. Person A contacted the police saying that Ms Gleeson had become drunk and argumentative, Person A had asked her to leave and she had refused. When the police attended, Ms Gleeson agreed to leave, the attending police officer took her home and according to the police report Ms Gleeson was advised that she would be arrested if she returned to Person A's home that evening causing further problems". This was not cross-referenced to any paragraph of Person A's witness statement, which did not address it, but did cross refer to the police report for that call-out, to which I shall need to refer in more detail later.

59. Mr Mant submitted that it followed that the statement of case, read as a whole and with the relevant cross-references to the witness statement and the supporting documentary references, provided the necessary detail.

60. I agree with Mr Mant on this point in relation to the two specific allegations, namely:

(a) The 1 October 2012 incident, substantially based on the evidence of the police report for that evening.

(b) The January 2014 report, entirely based on the evidence of the police report for that evening.

61. I am more concerned about the more general aggressive emotional abuse allegation. By reference to paragraphs 4 and 5 of Person A's witness statement, this allegation appears to cover the period from March/April 2012, when Person A moved out of her house and lived with her mother during the week, to September/October 2012, when Ms Gleeson moved out of the house. The only specific details of her behaviour given in paragraph 5 were that she was drunk and aggressive. In paragraph 3 reference was made more generally to her displaying difficult and aggressive behaviour and being a "nasty drunk".

62. It seems to me that whilst on this reading the allegation was just about sufficiently particularised it was nonetheless one to which the warning in paragraph 19 of Hutchinson particularly applied, namely that the panel should reach its finding with the risk of possible prejudice to the practitioner caused by delay (here, dealing with allegations dating from over 10 years earlier) and lack of specificity (here, the lack of any real detail as to what was meant by aggressive behaviour) firmly in mind.

63. Moreover, it also follows in my judgment that it was not properly open to the panel to make findings above and beyond those which were contained in the statement of case in the absence of amendment.

64. However, as I have already noted, in its findings the panel made a finding in relation to an incident on 8 February 2015. This was referred to in the statement of case, not under the section dealing with the aggressive emotional abuse allegation, but at paragraph 34 in the context of addressing the 2013 letter allegation, where it was said that: "There was further police involvement on 8 February 2015 when Person A contacted the police for assistance because she had received several unpleasant calls from the Social Worker and she had visited the Social Worker to tell her to stop the contact. Both parties were advised not to contact each other, the police took Person A home and no further action was taken by the police". No reference was made here to any part of Person A's witness statement or to any police report.

65. As I indicated during the course of oral submissions, in my judgment it was procedurally unfair and wrong for the panel to have included any finding in relation to this event in support of its finding on the aggressive emotional abuse allegation, given that it was not referred to as being relied upon as part of that allegation and given the absence of any details as to the content of the several calls said to be unpleasant or as to what, if anything, was done or said when Person A visited Ms Gleeson's home. There is no suggestion that it was ever made plain to Ms Gleeson or her representative that this allegation was going to be relied upon in support of the aggressive emotional abuse allegation, nor was any application to amend the statement of case ever made.

66. I shall have to consider the consequences of the panel making a procedurally unfair and wrong finding in this respect, in circumstances in which it was relied upon by them to find the aggressive emotional abuse allegation proved, when I come to consider the position overall below.

Ground 2

67. Here it is said that the chair's interventions, restricting the questions which Ms Gleeson's representative was permitted to ask Person A about their relationship, were wrong and/or irregular.

68. In my judgment this complaint is not made out. The complaint is that during cross-examination of Person A the chair intervened several times suggesting that Mr Walker should stop exploring the nature

and detail of the relationship and suggested that he move on to explore the specifics of the allegation. The submission is that given the general nature of the allegations it was wrong to seek to prevent Mr Walker from cross-examining on the general nature of the relationship. However, as Mr Mant submitted:

(i) Under rule 32(a) of the Fitness to Practise Rules 2019 the panel was entitled to regulate their own procedures and conduct the hearing in a manner they consider fair.

(ii) Any court or tribunal is entitled to set timetables for cross-examination and ensure reasonable compliance with those timetables and to exclude irrelevancies and discourage repetition.

(iii) An appeal should only be allowed on grounds of inappropriate intervention in cross examination where it resulted in actual unfairness.

(iv) Here Mr Walker was never prevented from putting questions to Person A about the nature of the relationship, only exhorted to remain within the agreed timetable for cross-examination and to focus on the allegations.

(v) It is not suggested that it was ever said to him that he could not cross-examine, for example, about the allegation that Ms Gleeson was regularly drunk and aggressive at weekends, or about the specific instances where the police attended or the thinking of ways to kill allegation.

Ground 6

69. The next ground logically to consider in my view is the complaint that the panel was wrong to accept (or failed to give adequate reasons for accepting) the evidence of Person A in relation to the allegations found proven.

70. This ground rolls up two separate allegations, with two separate potential consequences, where the first is that the decision was wrong and the second is that inadequate reasons were given.

Legal principles

71. Mr Mant referred me to the well-known and often-cited statement of Leveson LJ in Southall v General Medical Council [2010] WCA Civ 407 at paragraph 47 that challenges to findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are "virtually unassailable".

72. He also referred me to the extremely helpful synthesis of the principles established by the numerous authorities which were cited to him appearing at paragraphs 12 to 27 of the judgment of Morris J in Byrne v GMC [2021] EWHC 2237 (Admin) which, for reasons of space, I do not set out in full in this judgment but confirm I have borne firmly in mind.

The submissions in support of this ground

73. In paragraph 59 of his skeleton in support of the appeal Mr Dunlop identified a number of matters which, he submitted, showed that the findings were wrong, and which he expanded upon in oral submissions.

74. The first was that, as I have already noted, the panel itself recognised that Person A's evidence should be treated 'with caution'. Mr Mant countered that this was not the same as saying that the panel should

not have placed any or any substantial reliance on her evidence. I agree with Mr Mant's observation; there is an obvious difference between treating evidence with some caution and placing no weight upon it. Significantly, however, as is apparent from the panel's stated approach they recognised the importance of considering the contemporaneous documents, and the police reports in particular, when scrutinising the oral evidence. This was not the same as saying that they could and should only make their decision on the basis of an objective analysis of the police reports. However, having decided – for obviously good reasons – to adopt a cautious approach to the oral evidence of both Person A and Ms Gleeson, they needed in my judgment to scrutinise the police reports in particular with particular care to see what reliance could fairly be placed upon them (being careful, for example, to distinguish between what the police reported as having been told and what the police reported as having themselves seen, heard and done) and to adopt the same careful approach when it came to considering any other relevant contemporaneous documentary evidence such as the 2013 letter and the contemporaneous text messages.

75. Both Mr Dunlop and Mr Mant took me to the contemporaneous documents to seek to support their respective cases, and it is necessary for me to refer to them at this point to see what weight could properly be placed upon them.

The 1 October 2012 police report

76. This records that Person A made contact at 16:38 hours and that when the police attended later that evening they recorded "seen safe and well verbal altercation with partner no offences, no children, no alcohol, will update".

77. The panel recounted this (paragraph 94), recording that the report also stated "no offences were disclosed, nor further action taken by police", but also "noting" that "it had been Person A who had called the police". Mr Dunlop submits that this appears to be the first instance of the panel wrongly inferring that this must have been because of Ms Gleeson's aggressive behaviour. The panel also recorded (paragraph 93) what Person A had said in her witness statement as noted in paragraph 58(2) above. Whilst the witness statement could be read as an implicit allegation that there had been some unspecified aggression on this occasion, there was no positive statement to this effect, let alone any specifics.

78. The most that Mr Mant could add was to refer to Ms Gleeson's own witness statement, where she admitted going to the house and shouting outside, telling Person A to leave me alone because she had been upset by messages and emails sent by her.

79. At paragraph 130 the panel referred to this incident as an instance of "reported complaints of behaviour exhibited by Ms Gleeson". I have already referred to paragraph 133, from which it appears that the panel relied on this as evidence of Ms Gleeson often becoming aggressive towards Person A.

80. In my judgment the police report provides no safe or proper evidential basis for this conclusion and there was no other safe or proper evidential basis for it. Even if the panel had in fact found (which they did not say they had) that Person A's evidence and Ms Gleeson's evidence showed that Ms Gleeson's behaviour had been aggressive in some specified way or ways on this occasion, such a finding would in my judgment have been wrong, given that Person A had said in her witness statement

that she could not recall anything specific about what had happened and that they themselves had acknowledged the need to treat her evidence with some caution. As Mr Dunlop submitted, shouting at someone outside their house to leave them alone cannot – without some specific evidence as to what was being shouted or how or in what circumstances or for how long the shouting continued – be regarded as aggressive.

The 4 January 2014 police report

81. This is really the high water mark of SWE's case as regards the aggressive emotional abuse allegation. The police report records the original incident details as being Ms Gleeson and her son were shouting at each other with Ms Gleeson trying to get inside Person A's property and her son pulling her back. They then record that Person A and Ms Gleeson had been drinking together at the house, that Ms Gleeson had become extremely drunk and started to argue, that she had been asked to leave but had refused, and that as well as calling the police Person A had called Ms Gleeson's son who had arrived to get her out and home. When the police arrived Person A thought they had left, but they were still outside and refusing to go home. The police recorded that Person A had said that there had been an argument only and no violence, but she did seem really upset. Ms Gleeson agreed to leave, and she and her son were dropped off at their home and she was told that she would be arrested if she returned that night causing further problems. The police recorded that no offences had been disclosed. At this point Ms Gleeson's son was aged 17 years and there is no suggestion that Person A's son was in the house at the time.

82. There are some text messages between Person A and Ms Gleeson's son which add nothing material to the above account and some further text messages between Person A and her neighbour from the next morning which record Person A saying that she was scared and that her "door was about to come down" and the neighbour indicating that she believed Ms Gleeson was slurring and didn't have a clue what she was saying. There are also some text messages between Person A and her friend from the next morning in which Person A said that Ms Gleeson was drunk and threatening her, including with scissors (which she did not tell the police), and was then screaming and shouting from 12pm to 4am outside her house.

83. The panel made reference to this evidence in their decision at paragraphs 111 to 115, noting that the account in the police report was corroborated by the text messages exchanged, even if they might view the content of the messages from Person A herself as "self-serving".

84. Mr Dunlop made various criticisms of the panel's general approach to fact finding in relation to this and the other incidents relied upon. Thus, he submitted that: (a) the panel were wrong to rely on the evidence that it was Person A who had contacted the police, since that could just as easily be explained by Person A making false complaints; (b) the panel failed to consider Person A's credibility in the round or, thus, to take into account that they had not found proved the two assault allegations, including the very serious one that Ms Gleeson had "smashed" Person A's head against the wall; (c) the panel failed to give sufficient weight to the fact that Person A had said in terms, in the 2013 letter, that Ms Gleeson had not abused her and that there was only one occasion when they had a physical struggle; and (d) the panel failed to give proper weight to Ms Gleeson's excellent record as a social worker and

the absence of any previous regulatory findings against her by saying that they "also bore in mind that the allegations did not relate to her professional practise as such, but to her private life".

85. Whilst there is some force in these complaints, they do not in my judgment show either that the panel misdirected itself in law or failed to direct itself sufficiently or that its fact-finding exercise in relation to the 4 January 2014 incident could be shown to be wrong or unjust because of some serious procedural or other irregularity. The panel's decision in relation to this incident, adopting the approach of treating the evidence of Person A and Ms Gleeson with some caution, and scrutinising it with care against the contemporaneous documentary evidence and especially the police reports, cannot be faulted. Ms Gleeson's behaviour, as reported by the police and as corroborated by the texts from Ms Gleeson's son and from the neighbour, justified the finding made by the panel that Ms Gleeson's conduct on this occasion amounted to aggressive emotional abuse, in having been told to leave but then standing outside Person A's house and shouting to be let back in for a prolonged period and in a drunken state and despite attempts by her son to persuade her to leave and such as to concern the neighbour sufficiently for her to call the police and for them to feel the need to warn her that she would be arrested if she returned and caused further problems.

The 8 February 2015 police report

86. I have already held that the panel should not have made any adverse finding against Ms Gleeson in relation to this event, given that it was not identified by SWE in the statement of case as an event of aggression, let alone as one relied upon as supporting the aggressive emotional abuse allegation.

87. Even if the panel had been entitled to rely on it, whilst it recorded Person A having called the police to complain that Ms Gleeson was "outside the house shouting and being abusive" it also recorded that when the police arrived Ms Gleeson was outside, shivering "as though she had been there for some time", but was calm and coherent and saying that she had gone to the address to tell Person A to stop contacting her. She accepted police advice that "her timing wasn't the best" and, after satisfying themselves that no offences had been committed, they took her home to "ensure there would be no further issues outside the address".

88. The panel recorded (paragraph 118) that Person A had stated that Ms Gleeson turned up at her house on 08 February 2015, screaming and banging, and Person A called the police. They did not say anything more about this evidence.

89. As with the 1 October 2012 report, it seems to me that the police report alone, in terms of what it recorded that they had seen, heard and done, with no other contemporaneous documentary evidence, provides no proper or safe evidential basis for the conclusions drawn by the panel and that the panel could not properly have drawn this conclusion from Person A's extremely limited and arguably self-serving evidence, which they had to treat with some caution.

Was the panel entitled to draw the conclusion that Ms Gleeson had often been aggressive towards Ms over the course of their relationship between 2012 and 2015?

90. This is a key issue in relation to this aspect of the case.

91. The case for Ms Gleeson is that if I reach the point, as I have, where the only permissible conclusion for the panel, adopting and applying their own sensible approach to the evidence, was that the only specific instance of aggressive emotional abuse which they could properly find proved was the 4 January 2014 incident, then that simply does not provide a proper evidential platform for a finding that Ms Gleeson had often been emotionally aggressive towards Person A over an extended period of 3 to 4 years.

92. The case for SWE is that this is too narrow and technical an approach. Mr Mant submits that: (a) there had been this one serious incident; (b) there had been other instances of the police being called and reports of Ms Gleeson behaving in a way, which may not in itself have been aggressive emotional abuse but was close to it; (c) there were a number of other communications between the parties which showed the volatile nature of the relationship over an extended period, and (d) the panel had the inestimable advantage of seeing Person A, Ms Gleeson and her son giving evidence and being able to form a view as to how they spoke and behaved and how, therefore, they were likely to have spoken and behaved over the period in question. In the circumstances, he submits, it would be an unjustified interference with the role entrusted to the panel by the statutory established regulatory system to set aside this finding of primary fact.

93. It is important to remind myself that the allegation comprised: (a) a general allegation of being drunk and aggressive (in an unparticularised way) at weekends over the period from March/April 2012 to September/October 2012; (b) the specific allegation of 1 October 2012; and (c) the specific allegation of 4 January 2014.

94. On the findings properly open to the panel the only specific relevant allegation of aggressive emotional abuse which they were entitled to find proved and relevant was that of 4 January 2014. Whilst they could find that an incident on 1 October 2012 happened in which the police were called and attended, they could not – for the reasons given above – properly have found that it was an incident of aggressive emotional abuse. There was nothing referred to by the panel about events over the 6 month period preceding this which could justify a finding that Ms Gleeson had often been aggressively emotionally abusive within this period. The high point is in paragraph 91 of the decision where they record, without comment, Person A's "account .. that over the summer, Ms Gleeson's behaviour had escalated and become "unmanageable". Person A said that she had become withdrawn and upset. She said that, in around September or October, Ms Gleeson moved out, taking Person A's furniture". Applying the guidance in Hutchinson cited above to this allegation, in my judgment it was simply not properly or safely open to the panel to find this stale, vague and hopelessly general sub-allegation proved.

95. That leaves the question whether it was open to the panel to find the more general allegation proved. Here, Mr Dunlop submits not, for the very simple reason that an allegation that Ms Gleeson "often" became aggressive towards Person A cannot succeed if the only allegation which the panel could have found proved was limited to the one specific allegation of 4 January 2014. That has a superficial attraction, however in my view it needs to considered in the light of the wording of the allegations overall, and in the context that the panel found proved the I could kill you allegation. The allegations, forming part of the statement of case, should not be read as if they were part of a statute or as an indictment in a criminal case. It was alleged by SWE that Ms Gleeson was emotionally abusive to

Person A in: (a) often becoming aggressive; and (b) making the I could kill you statement (as well as by reference to the other allegations which were not found proved). It is apparent from the particulars of the allegation at paragraphs 24-26 that the I could kill you allegation was made on the basis that it was said seriously and was taken seriously and this could plainly amount to aggressive emotional abuse even if not specifically pleaded within the umbrella allegation at (a)(i).

96. However, it seems to me that the finding in relation to the I could kill you allegation is wrong anyway, for the simple reason that one very significant reason given for the panel for finding it proved was that in paragraph 139 they stated that "it was consistent with its finding that Ms Gleeson was often aggressive towards Person A that she said words of this nature". Given that, as I have found, that finding cannot stand, neither can this. It cannot be said that reliance only on the 4 January 2014 incident would have sufficed.

97. Additionally, the panel relied upon the 2013 letter to corroborate its finding, in which Person A stated in terms "One day Orla you were very, very sad and probably as depressed as me and you said you wanted to kill me. It was not intended to hurt me as it did I know. But it set off an element of paranoid worry about you and your intentions towards me". The panel did not engage with or make any finding as to whether or not, if it was said, it was said seriously with intent to cause Person A fear. That seems to me to be a significant consideration when deciding whether or not that making such a statement amounted to emotional abuse.

98. It follows, in my judgment, that the findings in relation to Person A were made procedurally unfairly and wrongly and should be quashed. In my view any fresh panel would be obliged to reach the same conclusion as I have done, if they adopted the correct approach to the allegations as they were advanced and pursued before the panel and to the contemporaneous documentary evidence, and if they had firmly in mind the warning in Hutchinson. I do not think it can be right to say that SWE should be allowed to put the case before a different panel because that panel might, for example, allow the allegations to be amended and/or find that Person A's evidence was entirely convincing and Ms Gleeson's account was entirely unconvincing, so that it did not matter that the police reports and texts did not provide firm support for her account. I do accept, however, that since I did say at the end of the hearing that I would not make a final determination on the precise terms of the remedy without allowing both parties to be heard further, because it was not something which they had specifically addressed, I will allow them to do so before confirming – or otherwise – this view which is, accordingly, provisional.

Ground 3

99. It follows that strictly speaking ground 3 does not arise for consideration. However, because it has been argued and because it might arise if I was wrong in my finding in relation to ground 6, I should address it. The complaint is that SWE was wrong to find that Ms Gleeson's emotional conduct, in non-professional relationships, was serious professional misconduct.

100. Under paragraph 25 of the Social Workers Regulations 2018 one of the grounds on which a social worker's fitness to practise may be found impaired is misconduct. It is common ground that in the professional regulatory context misconduct must amount to serious professional misconduct – which was explained by the Privy Council in Roylance v GMC (No 2) [2000] 1 AC 311 at p331 as involving:

(a) some act or omission which falls short of what would be proper in the circumstances; (b) which is linked to the profession in question; and (c) which must be serious.

101. It has, however, always been recognised that misconduct may qualify even though committed in the professional's private life, so long as it has a sufficient impact on his professional reputation or that of the profession as a whole. In the Divisional Court case of R (Remedy UK Limited) v General Medical Council [2010] EWHC 1245 (Admin) Elias LJ said at paragraph 37:

> "Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practise such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practise itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession."

102. This is echoed in relation to social workers by the standard to which the panel referred – standard 3 (2012): "You must keep high standards of personal conduct, as well as professional conduct. You should be aware that poor conduct outside of your professional life may still affect someone's confidence in you and your profession."

103. Mr Dunlop placed reliance on the further decision of the Divisional Court in Beckwith v SRA [2020] EWHC 3231 (Admin). In that case, the court made it clear that it was necessary to focus on the particular statutory and regulatory provisions applicable to the particular profession, rather than attempt some universal statement of principle. However, they did draw attention to the need to hold members of a profession to a higher standard on some matters, while not falling into the trap of requiring members of that profession to be paragons of virtue in all matters (paragraphs 30 and 34).

104. In that case, principle 6 required solicitors to "behave in a way that maintains the trust the public places in you and in the provision of legal services". At paragraph 43 the court said that: "There is a qualitative distinction between conduct that does or may tend to undermine public trust in the solicitor's profession and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful. Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of legal services or harm to the profession per se on the other hand has been crossed, will be a matter of assessment for the Tribunal from case to case". At paragraph 53 they emphasised that this principle did not have "unfettered application across all aspects of a solicitor's private life".

105. In my view similar principles must apply to standard 3 or comparable standards in the case of a social worker. Mr Mant submitted that members of the public would be particularly concerned about emotionally abusive or aggressive behaviour by a social worker in their private life, because of the role which a social worker performs in seeking to protect their clients from harm, physical or emotional. It seems to me that this is obviously right, especially insofar as it concerns children or other vulnerable persons, but that it does not necessarily follow that social workers are required to be paragons of virtue in their private life in relation to all of their relationships with all other people, including consensual relationships with adults of full capacity.

106. It is helpful to consider the allegations in this context. I have not been referred to any standard applicable to social workers which makes clear what does and what does not amount to emotional abuse. It is therefore perhaps not surprising that the sub-allegations against Ms Gleeson in relation to Person A all identify behaviour which in my view are, if made out, clearly capable of falling on the wrong side of the line, namely frequent aggressive behaviour, a serious threat to kill someone, a serious threat to take advantage of and thereby abuse the trust people would place in a social worker, and using coercive behaviour to procure the writing of a letter retracting serious and genuine allegations made by the other against the social worker. However, it is also worth observing that what is and what is not frequent aggressive behaviour will be very fact and context specific, given that such an allegation is not limited to actual or threatened violence.

107. Applying those principles to the facts of this case, it is in my view readily apparent that the panel was entirely justified in enquiring into the allegations on the basis that they were all capable of amounting to serious professional misconduct. However, equally, they had to be careful to ensure that they did not get drawn into exceeding the ambit of their jurisdiction as regards their findings. It seems to me that in making adverse findings in that respect in relation to the general and unparticularised allegations of drunken and aggressive behaviour and in relation to the incidents of 1 October 2012 and 8 February 2015, and in the absence of clear reasoned findings that such behaviour crossed the dividing line between conduct of which most people would not approve and conduct which was so disgraceful as to affect the public's confidence in the individual social worker or in the overall profession, the panel fell into error. I accept Mr Dunlop's submission that the panel, when making a finding in paragraph 208 that Ms Gleeson "had not withdrawn from the relationship when it became apparent that it was volatile [and] had also gone back to the relationship on repeated occasions when she should have completely ceased it" was making findings beyond its proper remit, in the absence of evidence that the relationship was inappropriate because it was with a child or other vulnerable person or otherwise by reference to repeated and serious professional misconduct by Ms Gleeson within that relationship.

108. In the circumstances, in my judgment even had the panel been justified in making the factual findings which it did, the only findings which would have justified a finding of serious professional misconduct would have been those relating to the 4 January 2014 incident and the threat to kill incident.

Postscript as regards Person A

109. It is worth standing back at this point and looking at the case advanced in relation to Person A in context. The most serious allegations were the two allegations of assaults, which were never even reported to the police or referred to in the 2013 letter, and not found proved. There were then three incidents the subject of police reports, only one of which really provided any support for an allegation that the conduct crossed the line between argumentative conduct, probably drink fuelled, in the context of a mutually volatile relationship, and being aggressive in a way which might impact on the professional reputation of Ms Gleeson and/or the profession as a whole. There was, finally, a wholly unparticularised allegation of being drunk and aggressive. All of this over a 3 to 4 year period ending 8 years before the matter came before the panel. But for the allegations of physical assault, it does not seem to me that this was really the proper subject of a professional misconduct allegation.

J. The grounds of appeal as regards Person B

110. Given that the only allegations found proved in relation to Person B were allegations of physical assault which, subject only to the issues of insight and remediation the subject of ground 7, evidently crossed the dividing line into serious professional misconduct, I can deal with these grounds rather more quickly.

Ground 4

111. It is alleged that it was wrong and unfair to permit SWE materially to amend allegation 2(b)(ii) after the witnesses had given evidence.

112. I have already said that the original allegation was that Ms Gleeson had pushed Person B down the stairs on the 30 July 2016 and that this was amended at the suggestion of the panel after Person B and Ms Gleeson had given evidence, in the face of opposition by Ms Gleeson's advocate, to an allegation that Ms Gleeson attempted to push Person B down the stairs.

113. This was dealt with by the panel at paragraphs 26 – 30 of the decision.

114. The panel was referred by the legal adviser to the decision of the Court of Appeal in PSA v HCPC and Doree [2017] EWCA Civ 319 and advised by the legal assessor that: (i) rule 32 gave power to the panel to regulate the proceedings, which would include the power to amend the allegation, subject to requirements of fairness; and (ii) the Doree case was authority that a panel may amend an allegation even at a late stage to avoid injustice. They allowed the amendment, holding that "the amendment more closely aligned with Person B's evidence. It removed any doubt over the meaning of the unamended allegation. Ms Gleeson had been served with Person B's evidence some time ago. Ms Gleeson's case was that no such push had occurred and accordingly, the panel did not see that any prejudice was caused by the amendment, though late".

115. That decision is attacked by Mr Dunlop on the basis that allowing the amendment was unfair and had caused or was capable of causing prejudice.

116. His first submission was that the pleaded allegation was a relatively easy allegation to defend, which did not require much thought – Ms Gleeson could rely on the fact that Person B did not have any injuries to show the allegation was false. He said that this was precisely the point Ms Gleeson made in her witness statement and oral evidence.

117. Mr Mant answered this by submitting that SWE's case had never been that Person B had, as a result of the push, actually fallen down stairs causing her to suffer injury, so that Ms Gleeson was not prejudiced by the amendment which simply aligned the pleaded case with the case which Ms Gleeson always knew she had to meet.

118. Thus, paragraph 48 of the statement of case, setting out the details of the allegation, stated that: "As Person B walked away she told the Social Worker that she would sleep downstairs at this point the Social Worker pushed her down the stairs. Person B will say that she managed to hold onto the banister with one hand to prevent herself from falling. She says 'the stairs were very steep in an old terraced house, I had high heels on and my life flashed before my eyes' (paragraph 15, Person B's witness statement)".

119. In my judgment, reading this Mr Dunlop's argument cannot succeed. It is plain from the statement of case that it was never alleged that Ms Gleeson had succeeded in pushing Person B so that she fell down the stairs and suffered injury. Whilst there may have been some lack of clarity as to precisely where the push was and where Person B held onto the banister, the essential nature of the complaint was clear. It was not a case where the actual evidence of Person B materially changed, thus causing Ms Gleeson any prejudice in defending herself.

120. Mr Dunlop however also submitted that there is a material difference, in that the unamended allegation did not allege a positive intent to push Person B down the stairs, whereas the new allegation did, so that it could not simply have been defended by suggesting that it might have been an accidental contact. However, as Mr Mant submitted, as a matter of ordinary English the word "push" naturally carries with it the connotation of deliberate intentional contact. It clearly did in this case. Thus, in my judgment, there was no reasonable room for ambiguity in the allegation in that respect. As he said, Ms Gleeson's case was, and always remained, a straightforward denial of any push, so there was no room for inviting the panel to find shades of grey.

121. Mr Dunlop also submitted that this amendment made the allegation more serious and may have resulted in, for example, a decision to call live character witness evidence or to instruct a more senior advocate. However, as Mr Mant submitted, since Ms Gleeson was already facing three other allegations of physical assault anyway, that submission cannot be accepted.

122. I am therefore satisfied that the decision to allow the amendment was clearly correct and that this ground must fail.

Ground 6

123. In the same way as with Person A, Ms Gleeson contends that the panel was wrong to accept and/or failed to give adequate reasons for accepting the evidence of Persons A and B in relation to the allegations found proven. It engages the same legal principles as discussed above, which I need not repeat here.

124. In its findings in relation to these assaults the panel did not make the same findings in relation to Person B as it did in relation to Person A, i.e. that it should treat her evidence with caution. It did, however, make extensive reference to and placed significant reliance upon the police report which I should therefore consider.

125. The police report records the original incident details as reported by Person B as being that Person B and Ms Gleeson "have had a domestic and [Ms Gleeson] has tried to throw her down the stairs, no injuries, [Person B] is now in the street with her belongings". It records that, when the police arrived, Person B spoke to Ms Gleeson's son in their presence and told him that she had been in bed and Ms Gleeson had grabbed her by the feet and dragged her out of bed and tried to throw her down the stairs. When they spoke to Ms Gleeson she said that she had kicked Person B out of the address. They then spoke again to Person B who repeated her story, adding that "this was not the first time and she was covered in bruises". She said that Ms Gleeson had told her that some of the bruises had come from a previous accidental fall in the bath, which she did not believe. Person B protested when Ms Gleeson

was arrested, saying that she was not pressing charges. The police recorded that both parties had been drinking.

126. The panel noted that there was no reference in the police report to Person B telling the police that she had a bruise from being pulled out of bed by her feet. This is relevant, because she had said in her witness statement and her evidence that this incident had caused a huge bruise on her foot and that she had shown this to the police. The panel did refer to her telling the police that she was covered in bruises. They did not, however, submits Mr Dunlop, fairly acknowledge or address the impact of the inconsistency. I accept that there was an inconsistency, as indeed did the panel, but it seems to me that they were entitled to observe that there was a possible explanation for the inconsistency which – realistically – they were not in a position to determine one way or another with confidence and nor was it of such significance as to compel them to treat Person B's evidence overall with little or no weight.

127. The panel noted that Ms Gleeson's account was that her son was not present when the police arrived and observed, rightly, that this was a significant inconsistency between her account and the police report. They also noted that Ms Gleeson's account that she had been arrested to prevent a breach of the peace, rather than because of Person B's complaint of assault, was in their view unlikely, and that this also undermined the credibility of her account. This was a conclusion they were plainly entitled to reach, not least because the police report records that the suspect was detained / arrested for domestic violence / incident.

128. The panel proceeded to give rational reasons for not affording much weight to the evidence given by Ms Gleeson's son, not least because his evidence that he had no recollection of being present contradicted the content of the police report.

129. The panel stated that they took into account that Person B had "apparently behaved oddly, on her account returning to the property to collect her father's hoover, despite allegedly being assaulted. The panel noted the evidence that Person B had been described as being very animated by events, even being described as "hysterical" in the police report". They decided, however, on balance, that they accepted Person B's account of events, stating: "She had been very animated as a result of the incident at the time. She had been consistent in her complaint as to what occurred, to police and since. Compared to this, Ms Gleeson's account of why the police were called and why she was arrested did not seem at all probable to the panel".

130. Thus, although Mr Dunlop complains that Person B was "heavily intoxicated at the time of the incident – the police report was that she had been drinking and was hysterical. It recorded her walking down the street with a hoover and swearing at the police", the panel was entitled to note that the police report recorded that both parties had been drinking and they fairly acknowledged and took into account the evidence about Person B's behaviour when the police arrived.

131. Mr Dunlop also complains about the failure by the panel to address an inconsistency in Person B's evidence, because her written evidence was that she and Ms Gleeson had been drinking at home prior to the incident, whereas her oral evidence was that they had been drinking at a pub and, when they got back home, she stopped drinking. That, however, does not seem to me to be so significant as to require separate treatment.

132. Mr Dunlop also complains that her evidence was that she called the police then returned to the house to collect the hoover, which was inconsistent with the police report which records her holding the hoover while still on the call, but again that does not seem to me to be so significant as to require separate treatment.

133. Mr Dunlop also complains that the panel failed to have regard to the fact that no charges were pressed by the police, but that is scarcely surprising since Person B did not want to press charges and there was no evidence of injury.

134. Mr Dunlop also complains that the panel failed to have regard to the fact that they had found the other allegations against Ms Gleeson by Person B not proved, and should have taken into account that she had an animus against Ms Gleeson. However, the other allegations were essentially trivial in comparison and the panel did not find that Person B was deliberately lying about them.

135. The plain fact, in my judgment, is that the panel was entitled to and did place most weight on their assessment of the respective credibility of the accounts with the police report and they gave rational reasons for concluding that Person B's account was, overall, the most credible.

136. Although Mr Dunlop also complains that the panel did not repeat in this section their previous reference to Ms Gleeson's good character, there was no need to repeat the same advice or self-direction in the absence of any good reason to consider that they did not take it into account.

137. Mr Dunlop also complains that the panel did not consider the possibility of accidental contact however, as I have said, on the competing versions of events there was plainly no serious possibility of such a conclusion.

138. In short, whilst Mr Dunlop has raised every point realistically open to Ms Gleeson to advance, there is no proper basis for me to interfere with the panel's primary findings of fact on what was, in the end, a very straightforward factual dispute.

K. Wrongful reliance on Ms Gleeson's denial

139. Given the findings which I have made in relation to the allegations concerning Person A, the question of disposal arises. In my draft judgment I stated that it was apparent that the case would have to be remitted for a fresh determination in relation to impairment and sanction in relation to the allegations found proved against Person B and in relation to the inappropriate postings allegation. In his observations on the draft judgment Mr Dunlop clarified that Ms Gleeson intended to submit, at the forthcoming hearing in relation to consequential matters, that remittal was not the appropriate remedy and that I should instead dispose of the case in one of the other ways open to me, i.e. (i) quashing the decision with no further order, or (ii) substituting a different decision in relation to impairment or sanction. He pointed out, correctly, that I had already made clear in paragraph 98 of the draft judgment that my view as to the correct disposal in relation to the allegations concerning person A was only provisional and subject to further submissions, and invited me to make plain that this was also the position in relation to this issue. I indicated that, subject to further submissions, this seemed to me to

be right and that I should revise my draft judgment to make the position clear. Both parties agreed that I should do so, and I now confirm that this is the position.

140. In the circumstances, there is strictly speaking no need for me to address ground 7. However, since it has been argued, I do so briefly in case it assists the panel at the reconsideration stage if I decide that this is the appropriate disposal.

141. Mr Dunlop submits that the panel erred in their approach to their findings of impairment and removal because they wrongly held against Ms Gleeson the fact that she denied the allegations against her, or used those denials as evidence, in themselves, of a lack of insight which would justify a more serious sanction.

142. Mr Mant submits that, whilst denial of allegations is not a reason to impose a harsher sanction, it does make it more difficult for a practitioner to demonstrate insight and persuade a disciplinary tribunal that the relevant conduct will not be repeated.

143. Mr Mant referred me to the summary of the applicable principles conducted by Morris J in Sayer v General Osteopatic Council [2021] EWHC 370 (Admin) at [25] as follows, where he said this.

> "As regards the relationship between contesting the charges and insight, I have been referred to number of authorities: including Nicholas-Pillai v GMC [2009] EWHC 1048 (Admin) at §19; Amao v Nursing and Midwifery Council [2014] EWHC 147 (Admin) at §§160 to 164; Motala v GMC [2017] EWHC 2923 (Admin) at §§30, 31 and 34; Yusuff v GMC [2018] EWHC 13 (Admin) at §§18 to 20; GMC v Khetyar [2018] EWHC 813 (Admin) at §49; GMC v Awan [2020] EWHC 1553 (Admin) at §38 and Dhoorah v Nursing and Midwifery Council [2020] EWHC 3356 (Admin) at §36. From these, I draw the following principles:
>
> (1) Insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct.
>
> (2) Denial of misconduct is not a reason to increase sanction: Awan §38.
>
> (3) It is wrong to equate maintenance of innocence with lack of insight. Denial of misconduct is not an absolute bar to a finding of insight. Admitting misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it: Motala §34 and Awan §38.
>
> (4) However attitude to the underlying allegation is properly to be taken into account when weighing up insight: Motala §34 Where the registrant continues to deny impropriety, that makes it more difficult for him to demonstrate insight. The underlying importance of insight and its relationship with denial of misconduct was usefully analysed by Andrew Baker J in Khetyar (at §49) as follows:
>
> > "Of course, no sanction was to be imposed on him for his denials as such; however, insight requires that motivations and triggers be identified and understood, and if that is possible at all without there first being an acceptance that what happened did happen it will be very rare, and any assessment of ongoing risk must play close attention to the doctor's current understanding of and attitude towards what he has done.".

(5) The assessment of the extent of insight is a matter for the tribunal, weighing all the evidence and having heard the registrant. The Court should be slow to interfere: Motala §§30 and 31.

144. Mr Dunlop submitted that, despite the panels' express recognition that Ms Gleeson was entitled to deny the allegations, in substance they did hold that denial against her, by holding that she had demonstrated 'no insight' in relation to the misconduct allegations found against her, and used that as a basis for imposing the most serious sanction. They had held against her that she had failed to put in supporting evidence which sought to 'explain her conduct within personal relationships' and that they had 'not been informed of any intention on the part of Ms Gleeson to resolve or remediate her failings, even after the panel's findings had been handed down'. In short, he submitted, it was unfair for the panel to put Ms Gleeson in a position where she either had to admit and promise to remediate the 'failings' found against her (thereby ruining her prospects of appeal) or face a more serious sanction for failing to promise remediation.

145. In response, Mr Mant submitted that the panel did not hold her denial against her. Instead, he submitted, in the absence of an admission, it was incumbent on Ms Gleeson to demonstrate by other means that she had understood the seriousness of the allegations and had taken steps to ensure that similar conduct would not occur in the future. She did not do so and, in the absence of any meaningful evidence of insight, the panel were right to find that (a) there was a risk of repetition and (b) the only appropriate sanction was a removal from the register.

146. It suffices to say that I accept and prefer Mr Mant's submission and find that the panel did not adopt an incorrect approach. They were entitled to have regard to the evidence which was before them, and to the absence of evidence which was not before them, as to insight and risk of repetition, which did not have to involve an admission of guilt. One hopes that Ms Gleeson will have been able to reflect on this and address matters appropriately when the matter comes back before the panel.

147. However, and finally, I am a little troubled by the panel's approach to sanction when it came to consider the question of suspension or removal. The panel noted paragraphs 137 and 138 of the relevant SG which read as follows:

"137. Suspension may be appropriate where (all of the following):

• the concerns represent a serious breach of the professional standards

• the social worker has demonstrated some insight

• there is evidence to suggest the social worker is willing and able to resolve or remediate their failings

138. Suspension is likely to be unsuitable in circumstances where (both of the following):

• the social worker has not demonstrated any insight and remediation

• there is limited evidence to suggest they are willing (or able) to resolve or remediate their failings"

148. My concern is that if this guidance is followed loyally but inflexibly, and without stepping back and looking at all of the circumstances at this stage, including, for example, in cases such as this: (a) the

positive evidence as to the social worker's performance of her professional duties; (b) the absence of any cross-over from her personal life to her professional life; and (c) the relatively limited nature of the allegations found proved over an extended period from 2012 to 2019, when compared with the complete absence of any evidence of repetition since 2019, then the absence of sufficient evidence of insight and remediation may mean that, in a case which is otherwise suitable for suspension, the sanction is almost inevitably removal even if, taking everything into account, that would not otherwise be justified.

Whilst this point does not strictly arise for determination on this appeal at this stage, I hope it may be of use if and when the panel comes to consider their decision on sanction in this case.