

Social Worker: Deliwe Mary
Mhlanga

Registration Number: SW56615

Fitness to Practise

Final Order Review Meeting:

Meeting Venue: Remote Meeting

Date of meeting: 5 January 2021

Final Order being reviewed: Suspension Order – (expiry date 14 February 2021)

Hearing Outcome: Removal Order (to take effect upon expiry)

Introduction and attendees

1. This is the fourth review of a final suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee of the Health and Care Professions Council (HCPC) on 18 January 2017.
2. Ms Mhlanga (“the social worker”) did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP and their written submissions are set out within the notice of hearing letter.

Adjudicators	Role
Claire Cheetham	Chair
Christine Moody	Social Worker Adjudicator
Lorna Taylor	Lay Adjudicator

Hearings Team/Legal Adviser	Role
Tom Stoker	Hearings Officer
Danielle Wild	Hearings Support Officer
Margaret Obi	Legal Adviser

Service of Notice:

4. The panel of adjudicators (‘the panel’) took into account the documents contained in the substantive order review hearing service bundle which includes:
 - A copy of the notice of substantive order review hearing, dated 18 December 2020, addressed to the social worker’s address as it appears on the Social Work England Register (‘the Register’);
 - An extract from the Register confirming the social worker’s registered address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 18 December 2020, a paralegal from Capsticks LLP sent the Notice of Hearing and related documents to the social worker’s registered address by ordinary first class post and special next day delivery;

- A copy of the Royal Mail Track and Trace Document indicating a 'signed for' delivery at the social worker's registered address on 19 December 2020 at 1.24pm.
5. The panel accepted the advice of the Legal Adviser in relation to service of notice.
 6. The panel was satisfied that the Notice of Hearing had been properly served on the social worker in accordance with Rules 44 and 45.

Proceeding with the final order review as a meeting:

7. The panel noted that the notice of final order review hearing informed the social worker that in line with the current government guidance concerning the COVID-19 virus pandemic, the review would take place electronically. The notice stated:

"If you wish to attend the electronic hearing, please confirm your intention **by no later than 4pm on 30 December 2020. Unless we hear from you to the contrary, we shall assume that you will not be attending the electronic hearing and Social Work England may, under Rule 16 of the Fitness to Practise Rules, decide to deal with the review as a meeting** [emphasis in the original]. If the review is dealt with by way of a meeting, the adjudicators will be provided with a copy of this letter setting out Social Work England's submissions and a copy of any written submissions you provide."

8. The panel took into account the Hearing Participation Form which had been signed by the social worker on 19 December 2020. The box ticked by the social worker indicated that she would not be attending the hearing and that she understood that, in her absence, the review could proceed as a meeting. The social worker enclosed written submissions.
9. The panel accepted the advice of the Legal Adviser with regard to Rule 16(c) of the Rules which provides:

"Where the registered social worker does not state within the period specified by the regulator whether they intend to attend before the regulator, the regulator may determine whether to make an order by means of a meeting."

10. The panel noted that the social worker had engaged on previous reviews of the substantive order, with the assistance of her husband. Therefore, the panel took the view that she is aware that she could attend a hearing by telephone or video-link. The panel also noted that the social worker has a number of health conditions. However, there was insufficient information before the panel to indicate that the social worker was unable to attend a hearing for health reasons. In these circumstances, the panel concluded that the social worker had voluntarily absented herself from participation in a hearing. The panel was satisfied that it would be fair and appropriate to conduct the review in the form of a meeting in accordance with Rule 16(c).

Preliminary Matters

11. The panel noted that the social worker has made reference to her health within her most recent written submissions and during previous review hearings. The panel determined that, where reference is made to the health of the social worker, it would not form part of the public record in order to protect her right to a private life, in accordance with Rule 38 of the Fitness to Practise Rules 2019.

Review of the current order:

12. This final order review hearing falls under the Transitional and Savings Provisions (Social Workers) Regulations 2019 and as a result the review will be determined in accordance with Part 5 of the Regulations, Schedule 2 paragraph 15 of the Regulations and Social Work England's Fitness to Practise Rules.
13. The current order is due to expire on 14 February 2021.

Background and Allegations Found Proved at the Substantive Hearing

14. The social worker was employed by Kent County Council ('the Council') from October 2011 until January 2014 in the Swanley Family Support Team.
15. The Council had concerns about the social worker's practice and performance throughout her employment. It referred concerns about her to the Health and Care Professions Council on 24 April 2014.
16. The Health and Care Professions Council's Conduct and Competence Committee conducted a substantive hearing of the allegations against the social worker, which concluded on 18 January 2017. The social worker attended the hearing and was unrepresented.
17. The substantive hearing panel found the following particulars proved:

During the course of your employment as a Social Worker with Kent County Council between 03 October 2011 until 03 January 2014 you:

1. In relation to Service User A:

- a. You were unable to manage the risk posed by Service User A's behaviour;*
- b. On 06 March 2013 you were unable to articulate:*
 - i. The chronology of events in relation to Service User A.*
 - ii. Associated risk.*
- c. Communicated inappropriately with Service User A's parent in that you continued speaking to Service User A's parent regarding a potential foster carer for Service User A when you were aware that Service User A could hear the conversation.*
- d. [not proved]*

- e. Completed a form requesting Service User A have respite, when this was not approved by Senior Management.
 - f. [not proved]
- 2. In relation to Service User B:
 - a. You congratulated Service User B when the Crown Prosecution Service decided not to pursue allegations of child sexual abuse.
 - b. [not proved]
 - c. [not proved]
- 3. On or around 17 September 2013 Service User C attended The Willows and you:
 - a. Refused to see Service User C.
 - b. Did not make alternative arrangements to meet Service User C.
 - c. [not proved]
- 4. In relation to Service User D you:
 - a. Made comments to Service User D's children, namely:
 - i. 'Doesn't mummy play with you?' or words to that effect
 - ii. 'I think your mummy talks to much', or words to that effect;
 - iii. 'I think your mummy should let you live a life', or words to that effect;
 - iv. Why are you giving me a bashed up bus for, I need a fast car for when I have to rescue you one day', or words to that effect; and/or
 - b. Said to Service User D, 'Don't you do anything with your children', or words to that effect.
 - c. Breached the confidentiality of Service User D in that you informed the father of Service User D's child that Service User D changed the child's nursery and informed him of the address.
 - d. Did not record any visits on Service User D between 15 August 2013 and 16 September 2013.
- 5. On 05 April 2013 you were informed of a safeguarding issue in relation to Service User E and you;
 - a. [not proved]
 - b. [not proved]
 - c. Did not inform Manager A of the safeguarding issue during supervision.
 - d. Visited Service User E on 05 April 2013 without considering all of the implications for the child.
- 6. On or around 18 July 2013 you were removed from working with a family as you were unable to manage the complexity of the case.
- 7. Did not maintain confidentiality in that you:
 - a. Discussed with Service User A's older sibling the possibility of Service User A moving into foster care.
 - b. Discussed with Service User G the Child Protection plan in-front of a neighbour.
- 8. Produced reports of a poor quality, namely;
 - a. Service User H's Section 7 report dated 24 April 2013.
 - b. Child Protection Conference Report relating to Service User A.

9. Did not take personal responsibility in that you submitted Service User H's poor quality Section 7 report to Legal Services without making the necessary changes highlighted, with the expectation that Legal Services would make the necessary amendments.
10. Were unable to work autonomously in that you required a large amount of direction with your casework.
11. Were unable to provide a clear and concise over view of your cases to Team Manager A in that you could not consistently:
- a. Advise of why social services were involved with the families on your caseload.
 - b. Advise of the plan in place to support the families on your case load.
12. You did not demonstrate the required time management skills, in that you:
- a. Did not co-ordinate visits to the same area and/or same family on the same day.
 - b. Needed reminders from Manager A to complete Section 7 reports
13. [not proved]
- a. [not proved]
 - b. [not proved]
 - c. [not proved]
14. You were unable to consistently carry a full case load.
15. Made incorrect mileage expense claims on a number of occasions including:
- a. 20 December 2012
 - b. 04 February 2013
 - c. 21 February 2013
 - d. 22 February 2013
 - e. 1 March 2013
 - f. 28 March 2013
 - g. 04 April 2013
 - h. 05 April 2013
 - i. 11 April 2013
 - j. 29 April 2013
 - k. 09 May 2013
 - l. 20 May 2013
 - m. 21 May 2013
 - n. 24 May 2013
 - o. 31 May 2013
16. [not proved]
17. The matters set out in paragraphs 1- 16 constitute misconduct and / or lack of competence.
18. By reason of your misconduct and / or lack of competence your fitness to practise is impaired.

18. The substantive hearing panel found that particulars 1(c), 4(a), 4(c), 7(a) and 7(b) amounted to misconduct while particulars 1(a), 1(b), 1(e), 2(a), 5(d), 8(a), 8(b), 10, 11, 12,

14 and 15 amounted to lack of competence over a wide area of the social worker's professional practice. The lack of competence related to (but was not limited to) an inability to understand and manage the needs and risks in relation to service users, report writing, time management, working autonomously, and taking personal responsibility for her own professional development. The substantive hearing panel imposed a Suspension Order for a period of 12 months.

19. The Suspension Order was reviewed on 11 January 2018. The social worker did not attend that review hearing and, in the absence of any remediation of the failings in practice identified by the substantive panel, a Suspension Order was imposed for a further 12 months.
20. The second review of the Suspension Order was undertaken on 17 January 2019. The Social Worker was not present at that hearing but was represented by her husband via telephone. The Panel concluded that as it still had no information in relation to remediation, it was appropriate to impose a Suspension Order for a further 12 months to enable the Social Worker to *"show her commitment to remedy her past failures of practice and to return to practise as a Social Worker"*.
21. The third review of the Suspension Order took place on 10 January 2020. The social worker attended by telephone and was assisted by her husband.

The Third Review Hearing

22. The third review panel determined that the social worker's fitness to practise remained impaired. That panel stated:

"The adjudicator's concluded that there was insufficient evidence that the risks identified by the substantive panel considering this matter have significantly decreased. The Social Worker had explained why she had been unable to take substantial steps to address all of the issues raised. The adjudicators accepted that her ill health could have inhibited her ability to remediate her deficiencies. However, at this point, the adjudicator's were of the opinion that she demonstrated little meaningful and embedded insight into the serious, sustained and widespread failings identified in her practice, but it was to her credit that she continued to engage with her regulator and recognised that she needed to do more to be able to return to practise. She had provided limited evidence of remediation and had not fully expressed remorse for her actions. Accordingly, the adjudicator's determined that her fitness to practice remains impaired."

23. The third review panel went on to consider sanction. In concluding that the appropriate and proportionate sanction was a further period of suspension. That panel stated:

"It was open to the adjudicators to extend the Suspension Order to afford the Social Worker a further period of time to remediate the failings identified in her practice. The

panel at the substantive hearing had identified that the Social Worker had shown some capacity to improve her practice when provided with appropriate support and guidance. While the adjudicators were sympathetic to the fact that the opportunities for the Social Worker to demonstrate remediation of failings in her practice were limited while she was suspended, they were conscious that she could seek employment in a social care setting without being employed as a Social Worker. They believed that she showed an awareness of this when accepting employment in a care setting and working with a Service User (whom she referred to as G.P.). Alternatively, she could seek voluntary roles, such as with a fostering agency, to aid her understanding of recent developments in social work practice. Once she had evidence that she had remediated the failings previously identified and embedded safe practice, she would be in a position to address adjudicators considering her fitness to practise.

The adjudicators gave this sanction particularly careful consideration given that she had provided information to them, demonstrated an awareness of current issues in social work and had clearly undertaken some learning related to some of the failings identified. They were conscious that a Suspension Order would have a punitive impact upon the Social Worker, however it was satisfied that her interests were outweighed by its duty to give priority to the protection of the public. The adjudicators were satisfied that no lesser sanction Order would be appropriate in the particular circumstances of this case.”

24. The third review panel imposed a further Suspension Order for a period of 12 months and took the view that a future reviewing panel would be assisted by:

- a. Continuing to engage with the regulatory process;*
- b. Being proactive in obtaining and providing information to her regulator (including any medical evidence in support of any health issues impacting her ability to make progress);*
- c. Demonstrating that she had undertaken paid or unpaid work in a social care setting;*
- d. Providing evidence of insight, remorse and remediation in respect of the misconduct and lack of competence identified by the substantive panel, preferably linked to her paid or unpaid work in a social care setting. This could be via a further reflective piece, through completion of relevant training opportunities and or securing a mentor registered with Social Work England.*

Social Worker’s Written Submissions:

25. The social worker in her written submissions, dated 19 December 2020, stated that she *'is seeking voluntary removal based on medical indisposition.'* She stated that she had previously submitted a medical letter which supports her request for removal on medical grounds.
26. The panel noted that the medical letter, dated 19 June 2020, included reference to a (PRIVATE) health condition (PRIVATE) for which she has been prescribed medication.

Social Work England's Written Submissions:

27. Social Work England informed the social worker in the Notice of Hearing that it would be seeking a removal order. Social Work England in its written submissions stated:

"...The Social Worker has not provided the relevant evidence to satisfy the panel that she has remediated her misconduct and/or lack of competence and is capable of safe and effective practise. She has been subject to a Suspension Order since January 2017.

The Social Worker has also indicated her desire to be removed the register (sic). It is understood that, as a result, the Social Worker does not intent to provide further material to any future panels."

28. The panel noted that following receipt of the social worker's medical letter, dated 19 June 2020, she was informed by Social Work England that *"voluntary removal is not available option at this stage."*

Panel decision and reasons on current impairment:

29. In considering the issue of current impairment, the panel undertook a comprehensive review of all the documentation contained within the hearing bundle including the decisions and reasons of the substantive hearing panel and subsequent review panels. The panel also considered the written submissions of both parties.
30. The panel applied the advice it received from the Legal Adviser as to the proper approach it should adopt. In particular that:
- The purpose of the review is to consider the current impairment based on the previous panel's findings of fact, the extent to which the social worker has engaged with the regulatory process, the scope and level of her insight, and the risk of repetition.
 - The persuasive burden is on the social worker.
 - In terms of whether the social worker's previous misconduct and lack of competence has been sufficiently, and appropriately remediated, relevant factors include whether she:

- (i) fully appreciates the gravity of the previous panel's finding of impairment;
 - (ii) has improved her skills and knowledge;
 - (iii) is likely to place service users at risk if she were to return to unrestricted practise.
- The panel should take into account information relating to the social worker's ability to practise safely and effectively and the wider public interest which includes promoting and maintaining proper professional standards of behaviour and promoting and maintaining public confidence in the profession.
 - It is only if the panel determine that the social worker's fitness to practise remains impaired, that it should go on to consider what, if any, sanction to impose by applying the guidance as set out in the Sanctions Guidance (SG) and the principles of proportionality which require the social worker's interests to be balanced against the interests of the public.
31. As a consequence of the social worker's non-attendance, together with no written submissions on the matter of misconduct and lack of competence, there was no evidence before the panel that she had acquired a deeper understanding of the seriousness of her misconduct and lack of competence or the impact of her conduct and behaviour on the safety and well-being of service users. Nor was there any evidence before the panel that the social worker has taken any steps towards remediation of the wide-ranging deficiencies in her practice as identified by the substantive hearing panel. In addition, there was no assurance that the misconduct had been remedied and therefore would not be repeated. The panel noted that the social worker has a number of health conditions and that her brief written submissions confirm that she wishes to be voluntarily removed from the Register on health grounds. The medical letter the social worker referred to in her written submissions is dated 19 June 2020 and provides no indication of her future prognosis (PRIVATE). An up to date medical report has not been provided. In any event, the panel was conscious that this matter relates to her conduct and competence as opposed to her health. In the absence of any positive evidence of insight and remediation, the panel was satisfied that there has been no material change in circumstances, since the last review hearing. Therefore, there remains a risk of harm to service users and a risk of repetition. The panel noted that the social worker was a newly qualified practitioner at the time of the referral to the HCPC in April 2014, the concerns identified were core skills fundamental to safe and effective practise and she has not practised since 2013. The panel also noted the social worker's deficiencies become more difficult to remediate the longer she remains impaired. In these circumstances, the panel concluded that the risk of repetition is high and is likely to be higher than it was at the time of the third review.
32. The panel noted that a significant aspect of the public component is promoting and maintaining public confidence and promoting and maintaining proper professional standards for social workers. Members of the public would be extremely concerned if a social worker was permitted to resume unrestricted practise in circumstances where they were either unwilling or unable, to remediate wide-ranging deficiencies in their practice.

The panel concluded that, in these circumstances, a finding of no impairment would seriously undermine public trust and confidence in the profession and Social Work England as a professional regulator.

33. Therefore, the panel was led to the inevitable conclusion that, the social worker's fitness to practise remains impaired.
34. Having determined that the Registrant's fitness to practise remains impaired the Panel went on to consider what sanction, if any, to impose.

Decision and reasons on sanction:

35. The panel was mindful that the purpose of any sanction is not to punish the social worker, but to protect the public and the wider public interest. The panel considered each available sanction in ascending order of severity.

No Action

36. The panel first considered taking no action. The panel concluded that, in view of the nature and seriousness of the social worker's misconduct and lack of competence which has not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action on her registration. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

37. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict the social worker's ability to practise and is therefore not appropriate where, as in this case, there is a current risk to public safety. In any event, the deficiencies in the social worker's practise had the potential to have wide-ranging adverse consequences and therefore some restriction on her practise is required. Therefore, the panel concluded that issuing advice or a warning would be inappropriate and insufficient to meet the public interest.

Conditions of Practice Order

38. The panel went on to consider a Conditions of Practice Order. The panel took the view that the social worker's deficiencies are potentially capable of being remedied and was satisfied that, in theory, appropriate, workable conditions could be formulated. However, the panel noted that the social worker's deficiencies, at the time of the original finding of impairment, were wide-ranging and she lacked sufficient insight which led the substantive

hearing panel to conclude that conditions would not be workable. The current position is that the social worker has not taken any of the remedial steps suggested by the third review panel and has requested voluntary removal from the Register on health grounds. The panel took the view that the social worker is either unwilling or unable to remediate the shortcomings in her practice and has made it clear that she does not envisage a return to practice which indicates a degree of insight into the reality of her situation. In these circumstances, the panel had no confidence that she would comply with a Conditions of Practice Order, even if suitable conditions could be formulated. The panel was aware that the suggestions made by the third review panel are only indicative and do not have any binding authority, unlike conditions which require compliance. However, both involve a willingness and an ability to comply with conditions, neither of which have been demonstrated by the social worker. Therefore, the panel concluded that conditions would not be appropriate or workable.

Suspension Order

39. The panel, having determined that a Conditions of Practice Order would not be appropriate went on to consider whether to extend the current Suspension Order for a further period of time. The panel noted that a Suspension Order would reaffirm to the social worker, the profession, and the public the standards expected of a registered social worker. It would also prevent the social worker from practising during the extended suspension period, which would therefore protect the public and the wider public interest. In addition, a Suspension Order would provide the social worker with the opportunity to develop further insight and take active steps towards a return to practice.
40. However, the social worker has not taken advantage of the opportunity to demonstrate a commitment to return to practice and there is no indication that she will do so in the future. On the contrary, the social worker has made it clear, in her most recent written representations, that she wishes to be removed from the Register. In these circumstances, the panel concluded that extending the current suspension order would be an inappropriate use of the valuable resources of time and costs, would serve no useful purpose and would not be in the social worker's interests.

Removal Order

41. The panel noted that a Removal Order is a sanction of last resort where there is no other means of protecting the public or the wider public interest.
42. The panel determined that a Removal Order should be imposed on expiry of the current Suspension Order. In reaching this conclusion the panel took into account paragraphs 97 and 98 of the SG which state:

“A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England.

Removal orders are not available in cases of ...lack of competence or capability, unless the social worker’s registration has already been subject to suspension or conditions on these grounds continuously for at least two years leading up to the making of the order.”

43. The social worker has not practised as a social worker or in a social work setting since October 2013, has been suspended since 2017 and has requested removal from the Register, albeit on a voluntary basis. In these circumstances, the panel concluded that there was no realistic prospect that the social worker was willing or able to return to safe and effective practice. Therefore, the panel concluded that no sanction lower than a Removal Order would be sufficient to protect the public. In reaching this conclusion, the panel took the view that there was no public interest in maintaining the social worker’s name on the Register and subjecting her to further reviews, particularly as she has made it clear that she has no intention of returning to practise and appears unwilling to engage any further with the fitness to practise procedures. The panel concluded that no sanction lower than a Removal Order would be sufficient to protect the wider public interest.

Right of Appeal:

44. Under paragraph 16 (1) (b) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social Worker may appeal to the High Court against:
- a. the decision of adjudicators:
 - i. to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
 - ii. not to revoke or vary such an order,
 - iii. to make a final order,
 - iv. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
 - b. Under regulation 16 (2) schedule 2, part 5 of the Social Workers Regulations 2018 an appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.
45. Under regulation 9(4), part 3 (Registration of social workers) of the Social Workers Regulations 2018, this order can only be recorded on the Register 28 days after the social worker was informed of the decision or, if the social worker appeals within 28 days, when that appeal is exhausted.

Review of final orders

46. Under regulation 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:

- 15 (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.
- 15 (3) A request by the social worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.

47. Under rule 16 (aa) of Social Work England’s fitness to practise rules, a registered social worker requesting a review of a final order under paragraph 15 of Schedule 2 must make the request within 28 days of the day on which they are notified of the order.