

Social Worker:
Sherrill Roseclaire Bryan
Registration Number: SW73475

Fitness to Practise Final Order Review Meeting:

Meeting Venue: Remote meeting

Date of meeting: Thursday 14 January 2021

Final Order being reviewed:
Suspension Order – expiring 27 February 2021

Hearing Outcome:
Removal Order – to take effect upon expiry of the current suspension order.

Introduction and attendees:

1. This is the second 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 30 January 2019.
2. Ms Bryan did not attend and was not represented.
3. Social Work England was not represented because this review has been listed as a meeting.

Adjudicators	Role
Rachel Cook	Chair
Gemma Bellwood	Social Worker Adjudicator
Douglas Thorpe	Lay Adjudicator

Hearings Team/Legal Adviser	Role
Kathryn Tinsley	Hearings Officer
Danielle Wild	Hearings Support Officer
Andrew Lewis	Legal Adviser

Service of Notice:

4. The panel of adjudicators (hereafter the panel) had careful regard to the documents contained in the substantive order review hearing service bundle as follows:
 - A copy of the notice of substantive order review hearing dated 18 December 2020 and
 - addressed to Ms Bryan at her address as it appears on the Social Work England Register and
 - sent to an email address for Ms Bryan supplied to Social Work England by Ms Bryan's previous regulator, the Health and Care Professions Council (HCPC);
 - An extract from the Social Work England Register detailing Ms Bryan's registered address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 18 December 2020 the writer sent, by special next day delivery post to Ms Bryan at the address referred to above, and by email to the

electronic mail address held by Social Work England, Notice of Hearing and related documents;

- A copy of the Royal Mail Track and Trace Document indicating that the recipient of the Notice at Ms Bryan's registered address, refused to accept the Notice and documents sent to Ms Bryan's registered address on 21 December 2020 and they were returned to sender.

5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard to Rules 16, 43 and 44 (iv), and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing, in the form prescribed by the Rules, had been served on Ms Bryan in accordance with the Rules, by sending it to the addresses referred to above.

Proceeding with the final order review as a meeting:

7. The Notice of Final Order Review Hearing informed Ms Bryan that, in line with the current government guidance concerning the COVID-19 virus (Coronavirus) 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 29 December 2020. Unless we hear from you to the contrary, we shall assume that you will not be attending the electronic hearing and the adjudicators may decide to deal with the review as a meeting. If the adjudicators do hold a meeting, they 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 received no information to suggest that Ms Bryan had responded to the notice of final order review hearing.
9. The panel heard and 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 decided that the practical effect of proceeding as a meeting meant that the review would be conducted without any submissions from Ms Bryan and without her express agreement. The panel therefore had regard to the test for considering whether to proceed in the absence of a social worker at a hearing. The panel had regard to Rule 43 which provides *"Where the registered social worker does not attend a hearing and is not represented, the regulator or adjudicators, as the case may be, may proceed to determine the matter, including in circumstances where the registered social worker has previously indicated they wished to attend, if they are satisfied that the registered social worker has*

been served or all reasonable efforts have been made to serve the registered social worker with notice of the hearing in accordance with these Rules.”

11. The panel also had regard to the Social Work England guidance, “Service of Notices and Proceeding in the Absence of the Social Worker, last updated 5 December 2019”, the decision of the *House of Lords in R v Jones [2002] UKHL 5* and the further guidance given to panels by the Court of Appeal in *GMC v Adeogba [2016] EWCA Civ 162*. These include the following:

- The discretion to continue in the absence of the social worker should be exercised with great caution and with close regard to the fairness of the proceedings.
- The decision about whether or not to proceed must be guided by Social Work England’s primary objective of protecting the public.
- Fairness to the social worker is very important, but so is fairness to Social Work England and the public.
- Whether all reasonable efforts have been taken to serve the social worker with notice.
- The panel should consider the nature of the social worker’s absence and in particular whether it was voluntary.
- Whether there is any reason to believe the social worker would attend or make submissions at a subsequent hearing.
- The duty of professionals to engage with their regulator.
- There must be an end to the adjournment culture.

12. The panel had particular regard to the following directions given by the Court of Appeal in *GMC v Adeogba*:

- The responsibility of a regulator, *“... is very simple. It is to communicate with the practitioner at the address he has provided; neither more nor less. It is the practitioner’s obligation to ensure that the address is up to date.”*
- there is a burden on (medical) practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them.
- *“Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.”*

13. The panel had regard to the steps taken by Social Work England to confirm that Ms Bryan lived at the address supplied to Social Work England by instructing an investigator, who reported on 24 April 2020, that she lived at that address. The panel noted that Social Work

England had obtained both the postal address and email address held for Ms Bryan by her previous regulator.

14. The panel was mindful that there was likely be a disadvantage to Ms Bryan in not attending or making written submissions. Nevertheless, it balanced that against the following findings:

- Ms Bryan has so disengaged from the process that she has waived her right to attend, despite being a professional with an obligation to cooperate with her regulator;
- the panel has a public duty to deal with a mandatory review of a suspension order before it expires;
- Ms Bryan has disengaged from the regulatory process for over 2 years, so that there was no likelihood that an adjournment would lead to Ms Bryan attending on a subsequent occasion.

15. The panel was satisfied that Social Work England has made “*all reasonable efforts*” to serve Ms Bryan with notice of these proceedings. The panel was also satisfied that there was no benefit in reviewing the suspension order imposed on Ms Bryan at a hearing in her absence, because it had no questions of Social Work England.

16. Accordingly, the panel decided it would be fair and appropriate to conduct the review in the form of a meeting in accordance with Rule 16(c).

Review of the current order:

17. 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.

The current order is due to expire at the end of 27 February 2021.

The allegations found proved which resulted in the imposition of the final order were as follows:

Whilst registered as a Social Worker, and employed at London Borough of Bromley between October 2005 and June 2017, you:

1. Between 09 September 2016 and 11 January 2017, regarding Service User A, you did not:

a) visit Service User A

- b) make enquiries at Service User A's care home ("the home") regarding risk assessments and/or support plan
- c) discuss the safeguarding concern with the home manager
- d) establish the level of supervision being provided by the home
- e) complete a mental capacity assessment
- f) contact next of kin within a reasonable timeframe after receiving the referral
- g) organise a best interest meeting

2. Between 20 May 2016 and 10 February 2017 regarding Service User B:

- a) You did not complete a safeguarding enquiry report following allocation to you on 20 May 2016 despite agreeing to during a safeguarding meeting on 25 May 2016;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Between 19 August 2016 and 31 January 2017, regarding Service User C, you did not:

- a) Carry out a visit within 28 days of referral
- b) Record sufficient information about Service User C's primary carer's ability to care for her;
- c) Take any action following the carer's request for respite and/or record doing so.

4. Regarding Service User D, you did not:

- a) complete an assessment until 10 October 2016 despite it being an urgent referral allocated on 23 September 2016
- b) record the assessment until after 4 November 2016
- c) make an adequate record of the assessment in that it did not include information about:
 - i) next of kin
 - ii) clinical team

iii) how Service User D managed their finances

iv) mental capacity

v) carer details

5. Regarding Service User E, between 18 September 2016 and 30 January 2017, you did not:

a) Visit Service User E and/or complete an assessment following report of a pressure sore on 21 September 2016

b) conduct a mental capacity assessment

c) contact the Clinical Commissioning Group to advise of Service User E's current status

d) consistently action tasks identified in supervision.

6. Regarding Service User F, during November 2016 you did not:

a) allow the warden to be present at the home visit

b) record details of the home visit

c) complete a mental capacity assessment

[REDACTED]

e) arrange an escort to accompany Service User F to hospital

7. Regarding Service User G, between 14 October 2016 and 04 November 2016, you did not:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) make an application for emergency placement of Service User G

8. The matters set out in paragraphs 1 - 7 constitute misconduct and/or lack of competence

9. By reason of your misconduct and/or lack of competence your fitness to practise is impaired.

Background:

18. Ms Bryan was employed at the London Borough of Bromley [LBB] from 17 October 2005 until 26 June 2017. She was employed as a Care Manager. Her role was to assess vulnerable adults who were referred to the team and to identify what was required to safeguard the client.
19. In January 2017, IC, Consultant Lead Practitioner for safeguarding referrals, raised concerns about the social worker's management of two cases involving Service User (SU) A and SU B.
20. As part of the disciplinary procedure, the LBB conducted a random audit of six of the Registrant's cases namely, SU A, SU C, SU D, SU E, SU F and SU G.
21. The allegation against the social worker included the following:
 - Not responding to the enquiries, which were often urgent, in a timely or appropriate manner.
 - Not completing the necessary checks or assessments.
 - Not recording the appropriate information or making a record of her enquiries.
 - Generally mismanaging and mishandling the cases, which ultimately meant that the social worker failed to safeguard vulnerable clients.
22. Although the social worker had engaged with LBB's internal disciplinary process, she did not engage with the Fitness to Practice process conducted by the Health and Care Professions Council ("the HCPC") and she did not provide any response to the allegation.

The substantive hearing

23. At the substantive hearing, which concluded on 30 January 2019, the majority of the particulars of the allegation were found proved. The panel found the social worker's fitness to practise was impaired based on the statutory ground of misconduct.
24. When making a finding of impairment the substantive hearing panel noted the following concerns: *"the Registrant has not engaged with the HCPC with regard to these proceedings. She has not produced any evidence of insight into or remorse for her failings. There is no evidence that she has sought to address or remediate any of the deficiencies in her practice that have been established. In these circumstances the Panel concluded that there is a serious risk of repetition. It further concluded that public confidence in the profession of Social Work and in the HCPC as its regulator, would be undermined if a finding of impairment was not made. The Panel also concluded that the need to maintain proper standards within the profession required a finding of impairment."*
25. Turning to sanction, that panel found the following aggravating factors: *"the number of failings that have been found proved, the fact that they extended over a considerable period of time and had the potential to cause serious harm to Service Users. The Panel also kept in*

mind the fact that the Registrant has not engaged with the HCPC with regard to these proceedings and has not provided any evidence of insight or remediation.”

26. That panel also found the following mitigating factors: *“the Registrant did make partial admissions during the LBB investigation; also prior to the events that are the subject of these proceedings she had a long and unblemished career in Social Work, with no previous Fitness to Practise concerns raised with the Regulator.*
27. That panel imposed a Suspension Order for a period of 12 months, saying that it would *“protect the public and, at the same time, enable the Registrant to determine whether she wished to resume her career as a Social Worker and also to address and remediate the deficiencies that have been established in this hearing.”*

The first review hearing:

28. At the first review hearing, on 20 January 2020, Ms Bryan did not attend, she was not represented, and she did not place any evidence before the panel.
29. The first review panel found Ms Bryan’s fitness to practise to be impaired. That panel noted that the social worker had not engaged with the HCPC or Social Work England with regard to these proceedings. She had not produced any evidence of insight into or remorse for her failings. There was no evidence that she had sought to address or remediate any of the deficiencies in her practice as found proved by the substantive hearing panel.
30. In these circumstances, the first review panel concluded that there was a serious risk of repetition. It further concluded that public confidence in the profession of Social Work and in Social Work England as its regulator, would be undermined if a finding of impairment were not made. The panel also concluded that the need to maintain and uphold standards within the profession required a finding of impairment.
31. That panel imposed a further suspension order for a period of 12 months. It said that sanction *“would protect the public and at the same time enable the social worker to determine whether she wished to resume her career as a Social Worker. The Panel considered that the social worker’s misconduct was remediable and that she should be given a further opportunity to demonstrate insight into her misconduct and the impact on service users and the public, and also to remedy her practice.”*
32. The reviewing panel stated that a subsequent reviewing panel may be assisted by the following:
- The attendance of the social worker, either in person, via Skype or telephone.
 - Information from the social worker as to whether she wishes to resume her career as a Social Worker.
 - A reflective piece from the social worker addressing the failings and deficiencies that have been established at this hearing and her insight as to the impact that

her conduct may have had on Service Users and on public confidence in the profession of Social Work.

- Evidence as to what the social worker has been doing both in paid employment and/or voluntary work since leaving the employ of LBB.
- Testimonials and references in respect of any employment, whether paid or unpaid, which the social worker has undertaken since leaving the employ of LBB, including evidence as to her ability to manage her workload and deadlines.

This review:

33. At this review meeting the panel considered all the material in the hearing bundle, including the decisions of the previous panels. It noted that Social Work England had written to Ms Bryan on 27 February 2020, 1 May 2020 and 5 November 2020. It also noted that Ms Bryan had not replied to any communication. Nor had she provided any evidence for the panel.
34. The panel read the submissions of Social Work England, which were set out in the notice of hearing letter dated 18 December 2020 which it sent to Ms Bryan:

“Since the substantive hearing no evidence has been provided which would allow a panel to conclude that the Social Worker has developed insight and successfully remediated. Social Work England consider therefore that the Social Worker’s fitness to practise remains impaired and that she cannot safely return to unrestricted practice.

The Social Worker has now been suspended for a period of almost two years and has not given any indication that she wishes to engage or return to practise as a social worker. In the circumstances, there is no realistic prospect of a further suspension order facilitating her safe return to practice in the foreseeable future. Absent any willingness to engage and bearing in mind the period for which the Social Worker has already been suspended, a further period of suspension is likely to result in deskilling and is therefore not in the public interest.

Taking the above considerations into account, Social Work England respectfully submits that a Removal Order is necessary for the protection of the public and in the wider public interest.”

35. The panel received no submissions from Ms Bryan.

The panel decision and reasons on current impairment:

36. In considering the question of current impairment, the panel undertook a comprehensive review of the final order in light of the current circumstances. It took into account the decision of the substantive hearing Panel. However, it has exercised its own judgement in relation to the question of current impairment.

37. The panel received the advice of the legal adviser, which it incorporated into the decision set out below.
38. First, it reminded itself of its powers under Paragraph 15 of schedule 2, part 5 of the Social Worker Regulations 2018 to extend the period for which the order has effect or impose any order the substantive panel could have imposed.
39. It reminded itself of the importance of a review hearing, described by the Supreme Court in *Khan v GPhC [2016] UKSC 64* as “the ‘teeth’ behind the sanctions other than erasure and should focus the [doctor’s] mind on the need to undertake any necessary remediation”.
40. It followed the ordered sequence of decision making set out by Blake J in *Abrahaem v General Medical Council [2008] EWHC 183*:
- i. address whether the fitness to practise is impaired before considering conditions.
 - ii. whether all the concerns raised in the original finding of impairment have been sufficiently addressed to the panel's satisfaction.
 - iii. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments.
41. The panel had regard to the over-arching objective of protecting the public which involves the pursuit of the following objectives:
- to protect, promote and maintain the health, safety and well-being of the public;
 - to promote and maintain public confidence in the profession regulated under this Order; and
 - to promote and maintain proper professional standards of conduct for members of the profession.
42. It also bore in mind that in deciding whether Ms Bryan’s fitness to practise is still impaired it should follow the approach of Dame Janet Smith endorsed by the High Court in *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)*: “Do our findings of fact in respect of the (registrant’s) misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:
- has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
 - has in the past brought and/or is liable in the future to bring theprofession into disrepute; and/or

- has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- *(this relates to the Registrants honesty and integrity, which are not in question in this case).*

43. The panel considered first whether Ms Bryan’s fitness to practise remains impaired. It bore in mind that there had already been a finding of impairment and asked itself whether Ms Bryan had demonstrated that she had taken sufficient steps to allay the concerns of the substantive hearing panel.

44. The panel noted that the substantive hearing panel had not found that Ms Bryan’s fitness to practise was irreparably impaired at that time, albeit that she had not engaged in the substantive hearing. The first review panel had given her a further opportunity to engage with her regulator, demonstrate insight and undertake remediation. It gave her clear guidance how to approach this task.

45. However, there was no evidence before the panel that Ms Bryan had taken any steps to develop insight or remediate her misconduct. On the contrary, all the evidence indicates that she has entirely disengaged from the regulatory process for over two years.

46. In those circumstances, the panel found that Ms Bryan’s fitness to practice remains impaired because it cannot be confident that she will not repeat her misconduct and so put service users and the public at risk and undermine public confidence in the social work profession.

Decision and reasons on sanction:

47. Having found Ms Bryan’s fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case.

48. The panel had regard to the submissions made and all the information before it and Social Work England’s Sanctions Guidance. It accepted the advice of the legal adviser.

49. The panel is mindful that sanction is a matter for its own independent judgment, and that the purpose of a sanction is not to punish Ms Bryan but to protect the public.

50. It reminded itself that the protection of the public includes not only maintaining the health, safety and well-being of the public but also maintaining public confidence in the profession and promoting and maintaining proper professional standards of conduct for members of the profession.

51. Furthermore, a sanction must be proportionate, so that any order that a panel makes should be the least restrictive order that would suffice to protect the public and the public interest.

52. The panel first considered taking no action. The panel concluded that, in view of the nature of the concerns, which have not been remediated, it would be inappropriate to take no action because that would be insufficient to protect the public.
53. The panel then considered whether to issue a warning. The panel noted that this sanction would not restrict Ms Bryan's ability to practise and is therefore not appropriate as it would fail to adequately protect the public or meet the wider public interest concerns.
54. The panel next considered a conditions of practice order. It bore in mind that the misconduct found at the substantive hearing remains capable of remediation. Nevertheless, the panel concluded that it could not draft workable conditions in circumstances where Ms Bryan had disengaged from the process and had not provided any reassurance to the panel that she would comply with conditions. Nor did the panel have any information about Ms Bryan's current circumstances or the current level of her knowledge and skills.
55. The panel then considered making a suspension order. It was satisfied that such an order would continue to protect members of the public from the risk of Ms Bryan repeating her misconduct. However, it was not satisfied that a further period of suspension would be sufficient to protect the wider public interest by upholding standards of conduct and maintaining public confidence in the profession, in the light of Ms Bryan's lack of engagement.
56. Ms Bryan has not engaged at any stage of the regulatory process, with either the HCPC or Social Work England. She has not responded to attempts by Social Work England to engage her. She has not attended three hearings. Nor has she submitted any material to either the substantive hearing panel or either of the reviewing panels, despite clear guidance on what to submit. Ms Bryan has been given adequate time to engage and has not done so. The panel found that no purpose would be served by extending the period of suspension with the associated need for a further review.
57. Accordingly, the panel concluded that public confidence would be undermined if it continued to suspend and review the suspension of a social worker who did not wish to engage with her regulator.
58. The panel then considered whether it should impose a removal order. The panel had careful regard to paragraph 96 of the Sanctions Guidance which provides that "*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.*"
59. The panel is satisfied that no other outcome would be sufficient to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers. Ms Bryan has made it clear she does not intend to engage with the regulatory process, and she has not provided the panel with any evidence of insight or remediation. This led the panel to conclude, having considered and discounted the less restrictive sanctions, that a removal order was necessary to protect the public, including the wider public interest.

60. Accordingly, the panel directs that Ms Bryan's name be removed from the Register of Social Workers when the current suspension order expires.

Right of Appeal:

61. 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,
- b. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.

62. 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.

63. 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.

64. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.

Review of final orders:

65. 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.

66. 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.

That concludes this determination.