

Social worker: David Blake Harper
Registration number: SW30715
Fitness to practise:
Final hearing

Date(s) of hearing: 8-9 February 2021

Hearing Venue: Remote

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This is a hearing of the Fitness to Practise Committee held under Part 5 of The Social Workers Regulations 2018.
2. Mr Harper did not attend and was not represented.
3. Social Work England was represented by Mrs Pitters of Capsticks LLP.

Adjudicators	Role
Name: Catherine Audcent	Chair
Name: Bronwen Cooper	Social Worker Adjudicator
Name: Lynne Vernon	Lay Adjudicator

Name: Tom Stoker	Hearings Officer
Name: Heather Hibbins	Hearing Support Officer
Name: Nathan Moxon	Legal Adviser

Notice of Service:

4. Mr Harper did not attend the hearing and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Mrs Pitters that notice of this hearing was sent to Mr Harper at his registered email address. This was evidenced by a signed witness statement from Laura Waterhouse, paralegal from Social Work England, who detailed that she emailed notice of the hearing and accompanying documents to Mr Harper on 7 January 2021. Mrs Pitters submitted that the notice of this hearing had been duly served.
5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard to the Fitness to Practice Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Mr Harper.

Proceeding in the absence of Mr Harper:

7. The panel heard submissions of Mrs Pitters on behalf of Social Work England. She submitted that notice of this hearing had been duly served and no application for an adjournment had been made by Mr Harper. Mr Harper had instead emailed Social Work England on 6 February 2021 to state that he would not be engaging in

proceedings and that he “will never return to social work”. She argued that there was no guarantee that adjourning the proceedings would secure his attendance.

8. She therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
9. The panel considered all of the information before it and found that it would be fair in all of the circumstances to proceed in Mr Harper’s absence.

Preliminary matters – Application to amend the allegations

10. Mrs Pitters applied to amend the allegation. She outlined that the current allegation, that Mr Harper was in possession of child abuse images, was not disputed as the images had been found upon his devices. The material issue to consider was whether he knew that he was in possession of such images or whether they were downloaded unwittingly, as he had contended. She argued that the addition of a second allegation, namely that Mr Harper ‘knowingly possessed’ the images, would ensure clarity as to the panel’s findings of Mr Harper’s culpability. She confirmed that Mr Harper was notified of the application to amend the allegations in writing on 25th November 2020 and had not responded to that application.
11. The panel accepted the advice of the legal adviser that when determining an application to amend allegations, the central consideration is one of fairness. The panel accepted the application to amend the allegations and found that doing so was fair, caused no prejudice to Mr Harper and ensured clarity. He had been given the opportunity to reply to the application, and had not done so.

Allegations (as amended):

12. Mr Harper faces the following allegations:
 - 1) In January 2019, you were found by police to have been in possession of a large collection of child sexual abuse images.
 - 2) In January 2019, you knowingly possessed all or some of the images which are the subject of Head of Charge 1.

Background

13. Mr Harper was employed as a service development worker at West Sussex County Council (“the Council”).
14. On 6 February 2020, Social Work England received a referral made by Mrs Clare Thompson of the Council in relation to Mr Harper being found in possession of child sexual abuse images.

15. In summary, almost 1,000 images were found upon Mr Harper's personal laptop and hard drive, which had been seized by police from his home on 30 January 2019. The images found on the devices ranged from Category A (most serious which depict penetrative sexual activity) to Category C (images that show sexual posing).
16. Mr Harper was interviewed both by the Police and by the Council. He claimed that the images had been inadvertently downloaded by him when he was attempting to download mainstream films for a community film club.
17. The police investigation concluded on 3 October 2019 and they found that there was insufficient evidence to charge Mr Harper, on the basis that there were no search terms consistent with him looking for indecent images and that the images found on his laptop were 'inaccessible', meaning that they had been deleted, and that it was therefore possible that Mr Harper may not have known that the images were downloaded onto his laptop.
18. Mr Harper was dismissed by the Council on 27th January 2020. The Council rejected his explanation as to how the illegal images were downloaded on his computer.

Summary of Evidence

19. Social Work England relied upon written and oral evidence from Detective Constable Thomas Coll, a police officer employed by Sussex Police in the Paedophile Online Investigation Team. He had been responsible for investigating Mr Harper, which included a police interview on the day of arrest.
20. DC Coll exhibited documentation pertaining to the police investigation.
21. In his oral evidence, DC Coll assisted the panel in understanding the documentation exhibited, particularly the 'Streamlined Forensic Digital Report' prepared by a police examiner. The devices seized had been used to 'Google' various search terms, including 'imgsrc' and '144chan.pk'. The former relates to a Russian website upon which indecent images can commonly be found, together with other illegal material such as images of weapons. The latter relates to a similar website from Pakistan. Within those websites Mr Harper's device had then accessed the following web pages:
 - a. 'Kids photos @iMGSRU.RU';
 - b. '/mir/~Any more of her?...'; and
 - c. '/mir/~ Home lolita'.

22. DC Coll detailed that images being “inaccessible” means that they have been opened and deleted or that they had been automatically stored in the background without the user ever knowing that they had been downloaded.
23. DC Coll stated that Mr Harper had told him that he had intended to download legal family films for a community film club and that investigations had shown that Mr Harper was a member of such a group.
24. Social Work England also relied upon the written and oral evidence of Mrs Deborah Robinson, who at the material time was service improvement lead in adult social care for the Council. She was responsible for investigating Mr Harper’s conduct and in doing so interviewed him on several occasions in 2019.
25. She detailed that Mr Harper’s role included an IT element. In her interview of him, Mr Harper confirmed that he understood that his role with the Council required him to have sound and accurate IT knowledge.
26. Mr Harper disclosed to Mrs Robinson that outside of work he utilised a “torrent” file sharing website to download mainstream films for no cost to play during a community film club meeting. He did not know who uploads the films. Several files can have the name of the film that he wished to download and it is only once downloaded that the true file name appears. He would delete files that he did not recognise or which had names that seemed “weird”. He would not open those files. He denied accessing or sending child sexual abuse material.
27. During a disciplinary hearing at the Council, Mr Harper maintained that he had never knowingly downloaded pornographic images of children or ever viewed such images.
28. Mrs Robinson exhibited documentation pertaining to her investigation, which included transcripts of the interviews with Mr Harper.
29. In her oral evidence, Mrs Robinson adopted her witness statement, albeit confirmed that the Council’s IT system is called ‘Mosaic’ rather than ‘Frameworki’.
30. In closing submissions, Mrs Pitters argued that Mr Harper had not disputed the presence of the images upon his devices. She stated that the panel could be satisfied that he knowingly possessed the images in light of the websites he had visited.

Finding and reasons on facts

31. The panel accepted the advice of the legal adviser that Social Work England must prove the allegations upon the balance of probabilities and that the more serious an allegation the more cogent the evidence would need to be in order to meet that standard.

32. The panel was satisfied, in light of the evidence from the police, that a large quantity of indecent images of children were located upon devices used by Mr Harper. Mr Harper had confirmed that they were his own devices and that only he had access to them. He has not denied that the images were present on his devices, and in police interview stated that he would not be surprised if he had seen child abuse images but could not remember any images specifically and if he saw anything illegal he would delete it. His response to the allegations when interviewed by the Council and the police was that any illegal images upon his device would have been downloaded unwittingly. The panel therefore found allegation one proved.
33. In considering whether the images were knowingly downloaded by Mr Harper, as set out in allegation two, the panel considered with care his explanation of how such material may have come to be on his devices. The panel gave weight to the fact that Mr Harper's explanation of seeking to download films for a community film club was supported by the fact that he is a member of such a club on social media. The panel also gave weight to the fact that he had given a consistent account in interviews with the police and the Council.
34. However, the panel was satisfied, upon the balance of probabilities, that Mr Harper did knowingly possess the indecent images of children. The panel did not accept as credible his explanation of having accidentally downloaded such material, given the quantity that was discovered, and the fact that his occupation entails good understanding of IT. The panel also noted that he had searched for websites which are known by police to contain illegal content, including indecent images of children. The panel did not accept that these are websites that he would utilise to access mainstream films as there are various other ways in which he could have accessed mainstream films.
35. The panel took into account that upon accessing the aforementioned websites, Mr Harper had selected web pages such as 'kids photos' and a page with the name of 'lolita'. The panel noted that Lolita was a book, and later a film, in relation to a sexual relationship between a man and a child and that such a term is often associated with the sexualisation of underage girls. The panel found that it was far more likely than not that in accessing foreign websites that publish indecent images, and then selecting the pages as outlined above, the only reasonable explanation was that he was seeking to access indecent images of children. Such a conclusion is supported by the large quantity of images that had been accessed on his devices.
36. The panel was therefore satisfied that Mr Harper knowingly possessed child sexual abuse images and he had that knowledge as he had intentionally viewed such material before deleting them from his devices. The panel therefore found allegation two proved.

Summary of Evidence and Submissions – Grounds and Impairment Stage

37. Mrs Pitters disclosed a letter from the Disclosure and Barring Service, dated 26th January 2021, which details that Mr Harper has been barred from engaging in regulated activity, which includes working with children and protected adults.
38. She submitted that the conduct found proved amounts to misconduct. Mr Harper's actions were in breach of the requisite HCPC Standards of Conduct, Performance and Ethics which applied at the time, particularly paragraph 9.1 which provides:
- “You must make sure that your conduct justifies the public's trust and confidence in you and your profession”.
39. She highlighted the volume and type of images that had been found upon Mr Harper's devices. Mrs Pitters submitted that there is always indirect harm caused by people who knowingly possess child sexual abuse images as if there was no audience for such images, it is unlikely that they would be created in the first place.
40. In relation to impairment, Mrs Pitters argued that a finding of impairment was necessary for both the protection of the public and the public interest. Mr Harper had breached a fundamental tenet of the profession and acted in a manner that would place the profession into disrepute, a profession which requires social workers to care for children and other vulnerable members of society. His lack of demonstrated remediation and insight is such that he poses a risk of repeating the misconduct.

Finding and reasons on current impairment

41. The panel accepted the advice of the legal adviser that it must again pursue the three limbs of the overarching objective when exercising its functions. The panel must first consider whether the proven allegations amounted to misconduct, whether that misconduct was serious and, if so, whether that leads to a finding of current impairment. Neither party bears the burden of proof. When considering impairment, the panel should consider whether the misconduct was remediable and, if so, whether it has been remedied and what insight has been demonstrated by Mr Harper. The panel must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.
42. The panel was satisfied that in the circumstances of this case, namely knowingly possessing a large number of child sexual abuse images, some of which were Category A, amounts to misconduct that is serious. The actions were in breach of paragraph 9.1 of the requisite professional standards, as outlined above. The panel

did not consider it to be material that the behaviour took place during his private life, given the nature of the misconduct.

43. Having found that Mr Harper's actions amount to serious misconduct, the panel considered whether his fitness to practise is impaired at the present time.
44. There is no evidence that Mr Harper has undertaken any remediation. Similarly, there is no evidence of insight from Mr Harper. He has denied knowingly possessing the images and has not meaningfully engaged with these proceedings, although it is noted that he did engage with the police and Council investigations. The lack of evidence of remediation or insight is such that the panel was satisfied that there was a risk of repetition. The panel accepted Mrs Pitters' submissions about the indirect harm caused to children as a consequence of Mr Harper accessing child sexual abuse images. The panel considered that the lack of insight into the serious misconduct, and the impact on the children who were the subject of the images, means that he represents an ongoing risk to the public.
45. Further, the panel was satisfied that the actions of Mr Harper, namely possessing almost 1,000 child sexual abuse images, including images of the most serious category, is such that well informed and reasonable members of the public, including members of the social work profession, would be appalled if a finding of current impairment was not made.
46. The panel therefore found that the allegations proved amount to serious misconduct and that for the reasons outlined above Mr Harper's fitness to practise as a social worker is currently impaired. Such a finding is necessary to satisfy all three limbs of the aforementioned objective.

Summary of Evidence and Submissions – Sanction Stage

47. Mrs Pitters highlighted that the primary purpose of Social Work England is to protect the public, which includes maintaining confidence in the profession and maintaining proper professional standards.
48. Mrs Pitters argued that taking no action or issuing advice or a warning would not be appropriate in the circumstances. It is not feasible or desirable to impose conditions in light of the seriousness of the misconduct and the fact that Mr Harper is barred from working with children and protected adults. She argued that there should be a removal order as no other sanction would protect the public or the public interest in light of the nature and seriousness of Mr Harper's misconduct.
49. Mrs Pitters directed the panel to paragraph 40 of the Sanctions Guidance:

“Some concerns are so serious that action is required even if the social worker poses no current risk to the public. This is because a failure to

sanction a social worker in such cases may undermine public confidence in social workers generally or may fail to maintain the professional standards expected of social workers. Sexual misconduct, violence, dishonesty, abuses of trust and discrimination involving a protected characteristic are examples of cases that are likely to be viewed particularly seriously given the access social workers have into people's homes and lives. More information is given about specific types of concern later in this guidance."

50. She also referred the panel to paragraph 97, which states:

"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. A decision to impose a removal order should explain why lesser sanctions are insufficient to meet these objectives."

51. She also referred the panel to paragraph 104, which states:

"Convictions for sexual assault or abuse of children through pornography are likely to require automatic removal of registration without adjudication."

52. She argued that Mr Harper's misconduct is aggravated by the quantity and type of abusive images, the lack of remediation and insight and the risk that possessing such images has upon the public and the public interest, as found by the panel during the impairment stage of the proceedings. She submitted that Mr Harper had demonstrated no remorse for his actions.

Findings and reasons on sanction

53. The panel accepted the advice of the legal adviser that it must again pursue the three limbs of the overarching objective when exercising its functions. The panel must apply the principle of proportionality, balancing Mr Harper's interests with the public interest. The purpose of a sanction is not to be punitive although a sanction imposed may have a punitive effect. The panel considered the least restrictive sanction first and then moved up the sanctions ladder as appropriate. The panel had regard to the sanctions guidance, published in November 2019, not only the paragraphs identified in submissions, but the guidance as a whole.

54. The panel reminded itself that it had concluded that Mr Harper poses a risk of harm to the public, and that his fitness to practise is impaired to satisfy the wider public interest, namely to promote and maintain public confidence and proper professional standards.

55. In relation to mitigating factors, the panel noted that Mr Harper had a hitherto unblemished career in social work. The panel was unable to identify further mitigating features in light of Mr Harper's denial of the misconduct, lack of meaningful engagement with the regulatory proceedings and lack of demonstrated insight and remediation. Whilst he had engaged with the police and Council in their investigations, the panel noted that he had given those authorities an account that has subsequently been dismissed by the panel.
56. The panel found that the misconduct was aggravated by the large number of images knowingly possessed by Mr Harper and the fact that some of those images included the most serious and harmful category. Mr Harper has demonstrated no remediation, insight or remorse. His actions place children at risk, as outlined within the determination on impairment.
57. The panel found that taking no action, issuing advice or issuing a warning would not adequately reflect the serious nature of the misconduct and would undermine public confidence in social workers in England.
58. The panel found that no workable conditions could be formulated to address the wider public interest in this case given the nature and seriousness of the misconduct and lack of remediation and insight. The panel was not persuaded by the fact that Mr Harper has been barred from working with children and protected adults as it found that it would nevertheless be inappropriate in all of the circumstances to impose an order of conditions.
59. The panel found that a suspension order would not be appropriate and proportionate in all of the circumstances of the case, including the assessed risk of repetition. The panel found that members of the public would find Mr Harper's misconduct deplorable and that public confidence in the social work profession and professional standards would not be maintained by a suspension order. The panel had particular regard to paragraph 104 of the sanctions guidelines, as outlined above. Whilst it noted that Mr Harper has not been convicted of a criminal offence, the panel considered that the thrust of the guidance equally relates to the circumstances of Mr Harper's case.
60. In light of the nature of the misconduct, the lack of insight and remediation demonstrated and the assessed risk of repetition, the panel concluded that removal of Mr Harper from the register was proportionate in all of the circumstances of this case in order to protect the public and to maintain public confidence and professional standards.

Summary of submission - Interim order

61. Mrs Pitters applied for an interim order of suspension during the appeal period to last for 18 months.

Findings and reasons on interim order

62. The panel accepted the advice of the legal adviser that, having made a final order, the panel may make any interim order they consider is necessary for the protection of the public and in the best interests of the social worker. The adjudicators must again pursue the three limbs of the overarching objective when exercising their functions.
63. In light of the decisions previously made, and in light of all the circumstances of the misconduct proved, the panel concluded that it was necessary for the protection of the public and in the wider public interest for an interim order to be imposed until the conclusion of any potential appeal proceedings.
64. The panel considered whether an interim conditions of practice order would be sufficient but concluded, for the reasons outlined in the substantive decision, that suitable and workable conditions could not be formulated.
65. The panel therefore found that an interim order of suspension was necessary for a period of 18 months, was appropriate and proportionate in all of the circumstances.
66. If there is no appeal against the final order, the interim order will expire when the period for appealing expires. If there is an appeal against the final order, the order expires when the appeal is withdrawn or otherwise disposed of.

Right of Appeal

1. Under paragraph 16 (1) (a) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social worker may appeal to the High Court against 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.
2. Under paragraph 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.

3. 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.
4. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.