

Social Worker: John Byekwaso

Registration Number: SW26263

Fitness to Practise

Final Order Review Meeting

Meeting Venue: Remote meeting

Date of meeting: 17 February 2021

Final Order being reviewed:

Suspension Order – 3 October 2019 – 3 April 2021

Hearing Outcome:

Removal Order (to take effect upon expiry)

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 5 September 2019. The order was reviewed by a Social Work England panel of adjudicators on 20 August 2020 and the suspension order was extended for a further 6 months.
2. Mr Byekwaso did not attend the meeting.
3. Social Work England was represented by Capsticks LLP and their written submissions are set out within the notice of hearing letter.

Adjudicators	Role
Rohan Sivanandan	Chair
Samuel Aweefo Ana-Amdingo	Social Worker Adjudicator
Rachel Miller	Lay Adjudicator

Hearings Team/Legal Adviser	Role
Natasha Quainoo	Hearings Officer
Paige Higgins	Hearings Support Officer
Nathan Moxon	Legal Adviser

Service of Notice:

4. The panel of adjudicators (hereafter the panel) had careful regard to the documents contained in the final order review hearing service bundle as follows:
 - A copy of the notice of final order review hearing dated 5 February 2021 and addressed to Mr Byekwaso at his home address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr Byekwaso's registered address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 5 February 2021 the writer sent the notice by special next day delivery and by email to Mr Byekwaso's registered postal and email addresses; and
 - A copy of the Royal Mail Track and Trace Document indicating "signed for" delivery to Mr Byekwaso's registered address at 9:41am on 6 February 2021.

5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard to the fitness to practise 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 Byekwaso.

Proceeding with the final order review as a meeting:

7. The notice of final order review hearing informed Mr Byekwaso 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 12 February 2021. 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 Mr Byekwaso 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 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).
11. The panel considered whether to adjourn the meeting to give Mr Byekwaso a further opportunity to engage with proceedings, but determined that this was not necessary in the interests of fairness given that he has failed, without good reason, to engage with the proceedings, which includes a failure to engage with the first review. He has voluntarily disengaged from proceedings and an adjournment is unlikely to result in re-engagement.

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 3 April 2021.

The allegations found proved:

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

“Whilst registered with the Health and Care Professions Council as a Social Worker and whilst employed by the London Borough of Newham Council, you:

1. In respect of Service User 1, for whom you had been the allocated social worker for her child until 16 February 2017, on a date or dates between 05 April 2017 and 21 April 2017:

a) Visited the home of Service User 1 without professional cause and/or reason:

i) on or around 16 April 2017 and/or

b) On or around 17 April 2017, provided Service User 1 with personal information about your family life;

c) Told Service User 1 that you were looking for a girlfriend;

d) On or around 17 April 2017, asked Service User 1 if two of her friends were single;

e) On or around 17 April 2017, asked Service User 1 if she was single;

f) Sent a number of texts and/or made a number of telephone calls to Service User 1;

g) Did not record the visit and/or telephone calls to Service User 1 on Service User 1's child's electronic case record.

2. The matters set out in paragraphs 1(a) – (g) were sexually motivated.

3. The matters set out in paragraphs 1 – 2 amount to misconduct.

4. By reason of your misconduct your fitness to practise is impaired.”

The final hearing panel's determination on impairment:

15. The final hearing panel determined that the Mr Byekwaso's fitness to practice was impaired as a result of his misconduct and the below extract from the final determination, dated 5 September 2019, outlined Dame Janet Smith's approach as outlined in the fifth report of the Shipman enquiry and sets out its reasons for its decision:

“In coming to its decision it took into account the following factors in relation to the personal component: (a) The Registrant's actions in attempting to take advantage of a vulnerable service user could have put her at unwarranted risk of harm; (b) Service User 1 had told Witness 2 that she lost respect for the Registrant because of his actions and he had made her feel uncomfortable; (c) There is limited evidence of any

insight on the part of the Registrant. This is a matter of misconduct, and there can only be very limited remediation without insight. Witness 1 told the Panel that the Registrant had expressed remorse for his actions at his disciplinary hearing. However, without his attendance, the Panel have been unable to test whether his remorse was genuine in relation to his actions. Nor has the Panel been afforded the opportunity to test the Registrant's insight. The Panel accepted that there was some evidence of insight demonstrated by the evidence and his admissions but was unable to test the level of insight on the part of the Registrant. (d) There has been no evidence of any action taken by the Registrant to remediate his misconduct. Therefore there was a real risk of repetition on the part of the Registrant. Accordingly, the Panel found the Registrant was currently impaired on the personal component.

In relation to the public component, the Panel determined that the Registrant's misconduct was such that the need to uphold professional standards and public confidence in the professions would be undermined if a finding of impairment were not made in these circumstances. His actions in breaching professional boundaries and in abusing his position of trust would be of widespread concern to social workers and members of the public.

Therefore, Panel determined that the Registrant's fitness to practise is currently impaired on both personal and public interest considerations."

16. That panel also determined that Mr Byekwaso's misconduct was such that:

"the need to uphold professional standards and public confidence in the professions would be undermined if a finding of impairment were not made in these circumstances".

The final hearing panel's determination on sanction:

17. In reaching its determination in relation to sanction the panel:

"... bore in mind the principles of fairness and proportionality when determining what the appropriate sanction in this case should be.

The Panel considered the aggravating factors in this case to be: (a) The Registrant was in a position of trust and his misconduct was a serious breach of trust; (b) Service User 1 was a vulnerable person due to her personal circumstances; (c) The Registrant's lack of insight and the risk of repetition.

The Panel considered the following to be mitigating features in this case: a) The Registrant made early admissions; b) The Registrant is of good character; c) This is a single incident in an otherwise unblemished career of 20 years in the same Local Authority. Witness 1 was clear that the Registrant was a respected Social Worker, who was reliable, competent and willing to help others. d) There was some evidence of difficulties in his personal life."

18. The final hearing panel determined that the appropriate sanction was the imposition of a suspension order for a period of 12 months.

The first review panel's determination on impairment and sanction:

19. The first review panel determined that Mr Byekwaso's fitness to practise remained impaired, for the following reasons:

"This panel noted that, since the suspension order was made in September 2019, three attempts have been made by Social Work England to make contact with the social worker at his registered address. Correspondence dated 20 December 2019, 18 March 2020 and 3 June 2020 has gone unanswered. The panel has not been provided with any evidence from the social worker as to his reflection on his misconduct, insight or steps taken to remediate his behaviour and there is no information as to his current circumstances. In the absence of any information from the social worker this panel has determined that the social worker's fitness to practise is currently impaired on the personal component. The panel has also determined that in the absence of any evidence as to remediation or insight and the serious abuse of trust and breach of professional boundaries found by the original panel, members of the public would be concerned if the social worker was not found impaired on the public component as well."

20. The first review panel concluded that the final order of suspension should be extended for a period of 6 months and provided the following guidance to Mr Byekwaso as to what information he could provide to assist a future review panel:

"The suspension order will be reviewed before its expiry. The panel would strongly encourage the social worker to attend a future review hearing and considers that a reviewing panel may be assisted by the provision of evidence that he has undertaken significant steps that would facilitate a safe and effective return to the register without restriction. This may include:

- (i) a reflective piece addressing insight and remediation and how his behaviour may have impacted on colleagues, service users and the reputation of the profession; and*
- (ii) an update as to his current circumstances in relation to maintaining his CPD."*

Social Work England submissions:

21. Submissions of Social Work England are contained within the notice of hearing:

"Social Work England invite the Panel to impose a Removal Order. The Social Worker has not provided any evidence or information as recommended by the Panel at the substantive hearing, and at the previous review hearing in terms of evidence that he has reflected on his misconduct, such as a reflective piece, or any update of what his current circumstances are in relation to maintaining his CPD.

The Social Worker has therefore not provided the relevant evidence to satisfy the panel that he has remediated his misconduct and is capable of safe and effective practise. He has been subject to an order of suspension since September 2019 and

has not provided any materials throughout that period.”

Social Worker submissions:

22. Mr Byekwaso did not provide any submissions or evidence for the hearing.

Panel decision and reasons on current impairment:

23. 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 previous panels. However, it exercised its own judgement in relation to the question of current impairment.
24. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and previous review panel. The panel also took account of the submissions made on behalf of Social Work England.
25. The panel heard and accepted the advice of the legal adviser. In reaching its decision, the panel was mindful of the need to protect the public and the wider public interest in declaring and upholding proper standards of behaviour and maintain public confidence in the profession.
26. The panel noted that the original panel found that Mr Byekwaso had limited insight and had demonstrated insufficient remediation into his misconduct. Both the original panel and the first review panel provided clear and reasonable guidance to Mr Byekwaso as to how he could seek to demonstrate developing insight and remediation. Regrettably, he has failed to follow this guidance and has continued to disengage with proceedings. He did not adduce submissions or evidence to the first review panel or to the current panel. This is despite the numerous efforts of Social Work England to contact Mr Byekwaso prior to both the first review meeting and the current review meeting. He has therefore failed to demonstrate that he has developed his insight or undertaken remediation. He has failed to demonstrate any progress since the final order of suspension was first imposed over a year ago.
27. In light of the lack of evidence of insight and remediation, and the failure of Mr Byekwaso to adequately engage with these regulatory proceedings, the panel found that there is a substantial risk that of repetition of his misconduct and that a finding that his fitness to practice is impaired therefore remains necessary to protect the public.
28. Further, in light of Mr Byekwaso's lack of evidenced insight and remediation, together with his lack of engagement in these proceedings, the panel concluded that members of the public would be deeply concerned if his fitness to practice was not found to be impaired and that such a finding would undermine public confidence in the profession. Such a finding would similarly fail to uphold professional standards.

Decision and reasons on sanction:

29. Having found Mr Byekwaso's fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case.

30. The panel considered the submissions made on behalf of Social Work England. The panel also took into account the Sanctions Guidance published by Social Work England.
31. The panel was mindful that the purpose of any sanction is not to punish Mr Byekwaso, but to protect the public and the wider public interest. The public interest includes maintaining public confidence in the profession and Social Work England as its regulator and by upholding proper standards of conduct and behaviour. The panel applied the principle of proportionality by weighing Mr Byekwaso's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action

32. The panel concluded that, in view of the nature and seriousness of Mr Byekwaso's misconduct, which has not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

33. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Byekwaso's ability to practise and is therefore not appropriate where there is a current risk to public safety. Mr Byekwaso's misconduct had the potential to have significantly adverse consequences and therefore some restriction on his 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

34. The panel went on to consider a conditions of practice order. The panel considered the nature of Mr Byekwaso's misconduct and the fact that the sanctions guidance, at paragraph 84, provides that conditions would almost certainly be insufficient in cases of sexual misconduct. The panel found that suitable conditions could not be formulated to adequately protect the public and satisfy the public interest. This is because Mr Byekwaso's misconduct indicates significant attitudinal factors. Also, the panel found that it is unlikely that Mr Byekwaso would comply with conditions in light of his failure to engage with the review proceedings. Further, his lack of engagement and evidenced insight and remediation is such that the panel was not satisfied that the risk of harm to the public could be managed by conditions and also found that conditions would be insufficient to maintain public confidence or professional standards.

Suspension Order

35. Having determined that a conditions of practice order would not be appropriate, the panel considered whether to impose a further period of suspension. The panel concluded that this would not be appropriate or proportionate in all of the circumstances. Mr Byekwaso has been subject to a final order of suspension for over 12 months and has failed, in that time, to demonstrate insight and remediation into his

actions. Instead, he has disengaged with proceedings. The panel therefore concluded that, having failed to utilise the opportunities given by the original panel and first review panel, there is little prospect of Mr Byekwaso utilising any subsequent opportunities. Further, the panel concluded that it would not maintain public confidence in the profession or professional standards to impose a third period of suspension upon a social worker who has failed to utilise the previous periods of suspension to demonstrate remediation and insight.

Removal Order

36. 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. The panel took the view that a removal order was necessary, appropriate and proportionate in this matter in light of the serious nature of the misconduct and the failure of Mr Byekwaso to adequately engage with the regulatory proceedings and evidence insight and remediation. The panel concluded that whilst the public can be protected from harm by restricting Mr Byekwaso from practicing by way of a suspension order, a third period of suspension would not serve the wider public interest. The panel concluded that, in all of the circumstances, an order for removal is the only order that would adequately maintain public confidence in the profession and professional standards.

Right of Appeal:

37. 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.

38. 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.

39. 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.

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

40. 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.

41. 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.