

Social Worker: David John
Atkinson

Registration Number: SW19670

Fitness to Practise:
Final Hearing

Dates of hearing: 23 - 25 May 2022

Hearing Venue: Remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This was a final hearing of allegations against Mr David John Atkinson held under Part 5 of the Social Workers Regulations 2018.
2. This hearing was held remotely.
3. Mr Atkinson did not attend and was not represented.
4. Social Work England was represented by Mr Adrian Harris, case presenter from Capsticks LLP, solicitors to Social Work England.
5. The panel of adjudicators conducting this hearing (the “**panel**”) and the other people involved in it were as follows:

Name	Role
Jane Everitt	Chair
Julie Brown	Social Work Adjudicator
Victoria Smith	Lay Adjudicator

Harry Frost	Hearings Officer
Paul Harris	Hearing Support Officer
Charles Redfearn	Legal Adviser

Service of Notice:

6. Mr Harris, on behalf of Social Work England, referred the panel to the notice of this final hearing, which was dated 11 April 2022. He informed the panel that the notice had, on that date, been sent by email to the email address held for Mr Atkinson by Social Work England. He added that this was in accordance with Mr Atkinson’s request for communications to be sent to him by email rather than by post. Mr Harris submitted that service of the notice was proved by the Statement of Service, which was included in the service bundle for this hearing. He added that, given the date on which the notice had been sent, Mr Atkinson had been given no less than 28 days’ notice of this hearing, as required by rule 14 of Social Work England’s Fitness to Practise Rules (the “**FTP Rules**”). Mr Harris then invited the panel to conclude that, in the circumstances, notice of this hearing had been properly served on Mr Atkinson.
7. The panel had careful regard to the contents of the service bundle, which included the following documents:
 - An extract from Social Work England’s register (the “**Register**”) showing the email address for Mr Atkinson held by Social Work England.
 - A copy of the notice of this final hearing dated 11 April 2022 which was addressed to Mr Atkinson at his email address as it appears on the Register. The notice specified the date, time and place of this final hearing and was accompanied by a statement of

case, setting out those matters that were agreed between the parties, those matters that are not agreed and the basis for alleging impairment of fitness to practise.

- A copy of a covering email dated 11 April 2022, which was sent by an employee of Capsticks LLP and addressed to Mr Atkinson at his email address as it appears on the Register and which referred to Mr Atkinson's "upcoming final fitness to practise hearing" and stated that it had attached to it a copy of a Notice of Hearing, a Statement of Case and related documents.
 - A copy of a signed statement of service which was made on 16 May 2022 by the employee of Capsticks LLP who had sent the covering email of 11 April 2022 and which confirmed that, on 11 April 2022, that employee had sent the notice of this hearing and related documents by email to Mr Atkinson at his email address as it appears on the Register.
 - A copy of an email dated 12 May 2022 from Mr Atkinson to the employee of Capsticks LLP who had sent the covering email of 11 April 2022. In his email, Mr Atkinson stated that he would not be attending this final hearing and asked for its outcome to be sent to him.
8. The panel accepted the advice of the Legal Adviser in relation to service of notice. This included reference to paragraph 10(2) of Schedule 2 to the Social Workers Regulations 2018 and rules 14, 15, 44 and 45 of the FTP Rules.
9. Having had regard to rules 44 and 45 of the FTP Rules and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this final hearing had been served on Mr Atkinson in accordance with rules 14, 15 and 44(a) of the FTP Rules and that the requirements of paragraph 10(2) of Schedule 2 to the Social Workers Regulations 2018 had been fulfilled.

Proceeding in the absence of Mr Atkinson:

Submissions on behalf of Social Work England

10. Mr Harris, on behalf of Social Work England, opened his submissions on proceeding in absence by submitting that the notice of this final hearing not only informed Mr Atkinson of this hearing but also of the options open to him in terms of attending, being represented and/or making written submissions. He added that, as Mr Atkinson had been given at least 28 days' notice of this hearing, he had had sufficient time in which to decide whether to avail himself of any of those options.
11. Mr Harris referred the panel to the details of the communications between Mr Atkinson and Social Work England's solicitors which were included in the documents provided to the panel for this hearing. He submitted that, in those communications, Mr Atkinson had made it clear that he did not propose to attend this hearing.

12. Mr Harris then referred the panel to its discretion to proceed in Mr Atkinson's absence under rule 43 of the FTP Rules and to the cases of *R v Jones [2003] UKPC 1* and *General Medical Council v Adeogba [2016] EWCA Civ 162*, which set out factors which the panel should take into account when deciding whether to exercise that discretion. He added that these factors included the need to balance fairness to Mr Atkinson with fairness to Social Work England and the public; Mr Atkinson's duty as a social worker to engage with Social Work England as his regulator and with these fitness to practise proceedings; and Social Work England's inability to compel Mr Atkinson to attend this hearing.
13. In relation to those factors, Mr Harris referred the panel to the details of the communications between Mr Atkinson and Social Work England's solicitors which were included in the documents provided to the panel for this hearing. He submitted that, in those communications, Mr Atkinson had made it clear that he did not propose to attend this hearing and that, in the circumstances, it was highly unlikely that an adjournment would secure Mr Atkinson's attendance. Mr Harris added that there was a strong public interest in this hearing proceeding in a timely manner, especially given the nature of the allegations against Mr Atkinson.
14. Mr Harris concluded by submitting that, in the circumstances of the present case, the factors mentioned above were decisively in favour of proceeding in Mr Atkinson's absence.

Representations from Mr Atkinson

15. Although Mr Atkinson did not make any written submissions on the subject of this final hearing proceeding in his absence, the panel noted from the documents before it that:
 - In his email of 12 May 2022 to Social Work England's solicitors, Mr Atkinson had stated that he would not be attending this final hearing.
 - A note of a telephone conversation between Mr Atkinson and Social Work England's solicitors which took place on 14 March 2021 reported Mr Atkinson as stating that **[PRIVATE]** he did not find it helpful **[PRIVATE]** for moving on to re-read the same things and relive a mistake he had made at a point when he was going through a period of emotional turmoil.
 - Similarly, a note of a telephone conversation between Mr Atkinson and Social Work England's solicitors which took place on 17 May 2021 reported Mr Atkinson as saying that he had "nothing to add" and that he had no intention of returning to social work and would "rather that everything is finalised than have it all dragging on".
 - According to telephone attendance notes in the bundles of documents before the panel, those points were re-iterated by Mr Atkinson to Social Work England's solicitors in telephone conversations on 7 April and 19 May 2022.

Legal Advice

16. The panel accepted the advice of the Legal Adviser in relation to proceeding in Mr Atkinson's absence. That advice included reference to rule 43 of the FTP Rules, Social Work England's guidance entitled 'Service of Notices and Proceeding in the Absence of the Social Worker' and the cases of *R v Jones [2003] UKPC 1* and *General Medical Council v Adeogba [2016] EWCA Civ 162*.

Panel's Decision

17. Having given careful consideration to the matter, the panel determined that this final hearing should proceed in Mr Atkinson's absence. The reasons for that determination were as follows:
- It was in the interests of Social Work England's overarching objective of protection of the public that the final hearing of the allegations against Mr Atkinson should be held promptly as those allegations related to matters which, if proved, would indicate that Mr Atkinson may pose a risk to the health, safety and well-being of young service users and that his alleged conduct may have an adverse effect on public confidence and proper professional standards.
 - Moreover, Mr Atkinson had, in communications with Social Work England's solicitors, indicated that he wished the fitness to practise proceedings against him to be concluded without further delay.
 - Given the communications between Mr Atkinson and Social Work England's solicitors mentioned above, the panel considered that Mr Atkinson had voluntarily absented himself from this final hearing and that an adjournment would be very unlikely to secure his attendance.
 - Having balanced the interests of Social Work England and the public against the interests of Mr Atkinson in being able to attend this hearing, the panel concluded that, given the factors mentioned above, the balance of fairness lay in this final hearing proceeding in Mr Atkinson's absence.

Allegations

Original Allegations

18. The allegations against Mr Atkinson which arose out of the regulatory concerns referred by Social Work England's case examiners were as follows:

Whilst registered as a social worker:

1. You were convicted at Warwick Crown Court of ATTEMPTING TO CAUSE A CHILD TO WATCH A SEXUAL ACT (contrary to section 1(1) of the Criminal Attempts Act 1981) for the purpose of sexual gratification, in that you attempted to cause someone you believed to be a 13 year old girl to look at an image of a man exposing his penis.

2. You were convicted at Warwick Crown Court of ATTEMPTING TO ENGAGE IN SEXUAL COMMUNICATION WITH A CHILD (contrary to section 1(1) of the Criminal Attempts Act 1981) for the purpose of obtaining sexual gratification, in that you intentionally attempted to communicate with someone you believed to be a girl aged 13 and the communication was sexual.

3. Your actions at RC1 and RC2 above were sexually motivated

By reason of your convictions/misconduct, your fitness to practise as a social worker is impaired.

Proposed amendments to allegations

Application

19. Mr Harris, on behalf of Social Work England, requested the panel to grant leave for the allegation of misconduct to be discontinued and, in consequence, for the above allegations to be amended by the deletion of paragraph 3 and by the removal of the word “misconduct” from the final paragraph.

Submissions

20. In support of his application, Mr Harris explained that the original allegations had been formulated before Social Work England’s case examiners had had the benefit of seeing the indictment against Mr Atkinson or the Certificate of Conviction. He went on to say that, as a result of the particulars of the offences (as set out in the indictment) making reference to sexual gratification, paragraph 3 of the original allegations had become repetitious. Mr Harris added that, as impairment could be alleged on the basis of the convictions specified in the allegations, it was unnecessary for Social Work England to proceed with a parallel allegation of misconduct. Mr Harris then submitted that, in the circumstances, the proposed amendments would not result in any under-charging of Mr Atkinson, nor would they cause him any prejudice.

Legal Advice

21. The panel heard and accepted the advice of the Legal Adviser on amendments. This included references to regulations 25(1) and (2) of the Social Workers regulations 2018, rule 32(a) of the FTP Rules, Article 6 of the European Convention on Human Rights and the case of *Bittar v FCA [2017] UKUT 82 (TCC)*.

Panel’s Decision

22. Having considered the matter, the panel consented to the proposed amendments for the following reasons:
 - The panel considered that supplementing the allegation of two criminal convictions by an allegation of misconduct and the related allegation of sexual motivation was an

unnecessary duplication and complication of the allegations against Mr Atkinson. Accordingly, the discontinuance of the allegation of misconduct and the consequential amendment of the allegations against Mr Atkinson would not result in his being undercharged.

- The notice of this final hearing had been accompanied by a Statement of Case which, among things, detailed and explained the proposed amendments. As the panel had found that the notice of this hearing and its accompanying documents had been served on Mr Atkinson on 11 April 2022, he had received 42 days' notice of those amendments. The panel considered that this had been sufficient time for Mr Atkinson to consider, and respond to, the proposed amendments.
- The proposed amendments were straightforward and would have been easily understandable by Mr Atkinson.
- Mr Atkinson had not objected to the proposed amendments.
- The proposed amendments would simplify the allegations against Mr Atkinson and, to that extent, they were in his interests. In any event, the proposed amendments would not cause him any prejudice.
- In terms of the factors set out in *Bittar*, the panel considered that the proposed amendments were relevant to the present case; that allowing them would be consistent with a proper consideration of the issues; and that the amended allegations would have a reasonable prospect of success.

Amended Allegations

23. The allegations against Mr Atkinson, as amended with the consent of the panel (the "**Allegations**") were as follows:

Whilst registered as a social worker:

1. You were convicted at Warwick Crown Court of ATTEMPTING TO CAUSE A CHILD TO WATCH A SEXUAL ACT (contrary to section 1(1) of the Criminal Attempts Act 1981) for the purpose of sexual gratification, in that you attempted to cause someone you believed to be a 13 year-old girl to look at an image of a man exposing his penis.

2. You were convicted at Warwick Crown Court of ATTEMPTING TO ENGAGE IN SEXUAL COMMUNICATION WITH A CHILD (contrary to section 1(1) of the Criminal Attempts Act 1981) for the purpose of obtaining sexual gratification, in that you intentionally attempted to communicate with someone you believed to be a girl aged 13 and the communication was sexual.

By reason of your convictions, your fitness to practise as a social worker is impaired.

Summary of Evidence

24. Social Work England presented documentary evidence only.
25. To prove Allegations 1 and 2, Social Work England produced a Certificate of Conviction dated 10 March 2021 from the Crown Court at Warwick and a related Indictment.
26. Certificate of Conviction stated that:
 - on 10 March 2021, at Warwick Crown Court, Mr David Atkinson had been convicted of one count of attempting to cause a child to watch a sexual act and one count of Attempting to engage in sexual communication with a child;
 - for each of those offences he had received a sentence of 8 months imprisonment suspended for 24 months, 40 days of rehabilitation activity requirement and 180 hours of unpaid work, such sentences to run concurrently; and
 - as an ancillary order, Mr Atkinson also received a sexual harm prevention order for a period of 10 years.
27. The Particulars of Offence on the Indictment stated:
 - in relation to the first count, *“David John Atkinson on the 20th day of June 2019, being a person aged 18 or over, and for the purpose of obtaining sexual gratification, attempted to cause someone he believed to be a 13 year old girl, whom he did not believe to be aged 16 or over, to watch a sexual act, namely to look at an image of a man exposing his penis.”*; and
 - in relation to the second count, *“David John Atkinson between the 19th day of June 2019 and the 28th day of June 2019 being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally attempted to communicate with someone he believed to be a girl aged 13 whom he did not reasonably believe to be 16 or over, the communication being sexual.”*
28. The documents before the panel also included:
 - a record of a police interview with Mr Atkinson which took place on 27 November 2019 (the day on which he was arrested for the offences of which he was convicted), in which Mr Atkinson denied having committed those offences;
 - a record of a further police interview with Mr Atkinson which took place on 12 June 2020, in which Mr Atkinson replied “no comment” to the questions put to him;
 - a copy of a police report (form MG5), which summarised the key evidence against Mr Atkinson, including a transcript of messages between Mr Atkinson and a person whom he believed to be a 13 year old girl but who was in fact a police officer;
 - a copy of the indictment detailing the offences with which Mr Atkinson was charged and for which he was subsequently convicted;

- a copy of the Sentencing Note, which, among other things, summarised the events which led to Mr Atkinson being charged with the offences of which he was convicted;
- a copy of a mitigation note and National Probation Service pre-sentence report, which were prepared for the Mr Atkinson's sentencing hearing;
- a copy of the sentencing remarks made by the judge at Mr Atkinson's sentencing hearing; and
- a copy of a referral to Social Work England about Mr Atkinson, which was made by the Head of Services at Leicestershire County Council on 9 July 2020. The referral notified Social Work England that, on 28 November 2019, Mr Atkinson had been arrested on suspicion of sexual communication with a child and causing a child to watch a sexual act.

29. From the documents before it, the panel noted that:

- At the time of the offences of which he was convicted, Mr Atkinson was employed, in the capacity of a social worker, as a team leader in Leicester Council's Children's Services. Mr Atkinson resigned from this post after deciding to plead guilty to the offences of which he was convicted.
- According to the Police Report, on 20 June 2019, a police officer purporting to be a 13-year old girl ("E") logged-on to an online platform known as 'Chat IW'. Between 20 and 27 June 2019 Mr Atkinson exchanged messages with E. At the outset of this exchange of messages, Mr Atkinson asked E's age and E replied that they were 13. During that exchange, Mr Atkinson sent a number of sexual messages to E, as detailed in the message transcripts in the Police Report. Among other things, Mr Atkinson sent to E a message containing a picture of a man exposing his penis and, in other messages, he asked E to take intimate pictures of themselves.
- On 27 November 2019 a warrant was executed at Mr Atkinson's home address and a number of devices were seized. Mr Atkinson was arrested and taken to Leamington Spa Police Station, where he was interviewed. During that interview and a subsequent interview on 12 June 2020, Mr Atkinson denied sending the messages to which his convictions relate.
- However, Mr Atkinson subsequently pleaded guilty to the two offences with which he had been charged and his case was adjourned to allow time for the Probation Service to prepare a pre-sentence report.
- Mr Atkinson's sentencing hearing took place on 10 March 2021. The sentences which he received are set out above.

30. The documents before the panel included notes of telephone conversations between Mr Atkins and Social Work England's solicitors which took place on 17 May and 29 July 2021. According to those notes, in each of those conversations, Mr Atkinson stated that he had

“no intention of challenging as “he was convicted back in March 2021”. Mr Atkinson even pointed out an inaccuracy regarding his convictions and his solicitor subsequently provided a copy of the Certificate of Conviction issued by Warwick Crown Court.

Finding and reasons on facts

Submissions

31. Mr Harris, on behalf of Social Work England, having referred the panel to the Statement of Case and the Sentencing Note, summarised the events leading to the two alleged convictions specified in Allegations 1 and 2, as set out above. In terms of the evidence to substantiate those alleged convictions, Mr Harris referred the panel to the Certificate of Conviction from Warwickshire Crown Court, the related Indictment, Mr Atkinson’s guilty plea to the offences specified on that Indictment and notes of telephone conversations between Mr Atkinson and Social Work England’s solicitors in which Mr Atkinson indicated that he accepted, or did not contest, that he had been convicted as alleged.

Legal Advice

32. The panel accepted the advice of the Legal Adviser on findings of fact. This included reference to Regulation 25(4) of the Social Workers Regulations 2018, rule 32(b)(vii) of Social Work England’s Fitness to Practise Rules and the cases of *Miller v Minister of Pensions [1947] 2 All ER 372*,

Panel’s Decision

33. The panel first considered whether Allegations 1 and 2 were “disputed facts” for the purposes of rule 32(a)(i) FTP Rules. In this regard, the panel noted that, from the telephone conversations between Mr Atkinson and Social Work England’s solicitors, that Mr Atkinson did not challenge the convictions specified in Allegations 1 and 2. However, as Mr Atkinson had not, in terms, admitted to the Allegations 1 and 2 and as he had not attended this hearing and was not represented , the panel considered it fair and prudent to proceed on the basis that Allegations 1 and 2 should be proved.
34. Having considered the matter, the panel found Allegations 1 and 2 proved for the following reasons:
 - The convictions specified in Allegations 1 and 2 were evidenced by the Certificate of Conviction and Finding dated 10 March 2021 from Warwick Crown Court as supplemented by the Particulars of Offence set out in the Indictment. In this regard, the panel noted that the first part of each of those Allegations was evidenced by the wording in the Certificate of Conviction and the second part of each of those Allegations was evidenced by the wording appearing in the related Particulars of Offence in the Indictment.

- There was nothing to suggest that those convictions were irregular.
- Mr Atkinson did not appear to dispute the convictions and particulars specified in the Certificate of Conviction and Indictment. On the contrary, the statements he was reported to have made during telephone conversations with Social Work England's solicitors indicated that he did not intend to challenge the allegation dispute that he had been convicted as stated in Allegations 1 and 2.

Finding and reasons on current impairment

Additional Evidence for Impairment and Sanction Stages

35. Before opening his submissions on impairment, Mr Harris informed the panel that a new document had been added to the bundles of evidence for this hearing. This was a letter dated 5 January 2021 from the Disclosure and Barring Service (the "DBS") to Social Work England, which stated that, with effect from 2 September 2021, Mr Atkinson had been barred from engaging in any regulated activity (which would include social work) with children and vulnerable adults. Mr Harris also informed the panel that it had been provided with a revised version of the notes of telephone conversations between Mr Atkinson and Social Work England's solicitors, in which references to his having been barred by the DBS were no longer redacted.

Submissions on behalf of Social Work England

36. Mr Harris, on behalf of Social Work England, opened his submissions on impairment by referring the panel to the test for impairment set out by the court in the case of Council for Healthcare Regulatory Excellence v Grant and Nursing and Midwifery Council [2011] EWHC 927 (Admin) and to the factors to be considered when assessing impairment as set out in Cohen v General Medical Council [2008] EWHC 581 (Admin).
37. Mr Harris then submitted that the facts underlying the present case were exceptionally serious in that Mr Atkinson had sent sexually explicit messages and material to a person who he believed to be 13-year old girl and sought sexually explicit material from them in return. Mr Harris added that this was incompatible with Mr Atkinson's position as a social worker
38. Referring the panel to paragraph 104 of Social Work England's Sections Guidance, Mr Harris pointed out that, as the offences of which Mr Atkinson had been convicted had been committed before Social Work England became the regulator of social workers in England, the automatic removal provisions of regulation 26 of the Social Workers Regulations 2018 would not apply in the present case. However, he suggested that the panel should nevertheless take into account the spirit of those provisions when considering the question of whether this Mr Atkinson's fitness to practise was impaired by reason of his convictions.

39. With regard to the risk of Mr Atkinson's conduct being repeated, Mr Harris submitted that, as Mr Atkinson's conduct was attitudinal it would be very difficult, if not impossible, to remedy with the result that there was a significant risk of its being repeated. He added that, in consequence, service users would be put at unwarranted risk of harm for the purposes of the first limb of the test for impairment in CHRE v Grant (cited above).
40. With regard to the "public component" of impairment, Mr Harris submitted that Mr Atkinson's conduct had been the antithesis of what the public expected from the social work profession and that, accordingly, public confidence in the profession would be damaged if a finding of impairment were not made in respect of Mr Atkinson. In this regard, Mr Harris referred the panel to the case of Yeong v General Medical Council [2009] EWHC 1923 (Admin), in which the court had stated that *"The public's confidence engaging with that practitioner and with other medical practitioners may be undermined if there is a sense that misconduct that violates a fundamental rule governing the doctor-patient relationship may be engaged in with impunity"*. Mr Harris also referred the panel to remarks made by the sentencing judge when sentencing Mr Atkinson, namely, *"I am satisfied that ... there is genuine remorse and shame. An underlying shame because it is shame that you have brought upon the Department that you work for. It will forever be tainted as someone who has been convicted of these two offences"*.
41. Mr Harris ended his submissions by inviting the panel to include that, for the above reasons, Mr Atkinson's fitness to practice was currently impaired in terms of both the personal and public components of that concept.

Representations from Mr Atkinson

42. Although Mr Atkinson had not provided any written submissions for the purpose of this final hearing the panel noted that the documents before it included notes of telephone conversations between Mr Atkinson and Social Work England's solicitors which took place on 14 March, 17 May and 29 July 2021 in which Mr Atkinson was reported to have stated that:
- His actions were "completely out of character". He felt "deeply ashamed" and "very regretful" about what had happened and was very upset about "the impact on people" of his actions.
 - He was experiencing difficulties with his personal life at the time, including mental health issues and drug and alcohol abuse. He recognised that this was not an excuse but he was "just trying to explain it" This, and his remorse, was recognised by the court when he pleaded guilty.
 - He had never done anything wrong in terms of his work as a social worker and was never subject to any disciplinary proceedings.
 - He had shown significant remorse about his wrong-doing but he hoped that he would not be judged solely on one mistake. He recognised the one mistake which he had made

and did not want to be judged on this solely, as he had done a lot of good for a lot of people as a social worker.

- He was engaging and working closely with his probation officer and with the police and that Social Work England could speak to them, if it wished.
- He had no intention of returning to social work and no objection to being removed from Social Work England's register. That part of his life is over and he is moving on.
- **[PRIVATE]**

43. More recently, in a note of a telephone conversation between Mr Atkinson and Social Work England's solicitors which took place on 7 April 2022 Mr Atkinson was reported to have stated that:

- He had done a lot of work for a lot of people over the years and he committed the offences of which he was convicted when he was suffering from trauma but neither of those factors appeared to have been taken into account.
- The sentencing judge said that the risk of Mr Atkinson committing a further offence was very low, but Social Work England and its solicitors had undermined this point by failing to discuss the matter with the probation service or the police.
- He had accepted his punishment and engaged with the probation service but he did not know what else there was for him to do in order to show that this was something in his past.

Legal Advice

44. The panel accepted the advice of the Legal Adviser with regard to impairment. This included reference to Social Work England's Sanctions Guidance and the cases of Council for Healthcare Regulatory Excellence v Grant and Nursing and Midwifery Council [2011] EWHC 927 (Admin), Meadow v General Medical Council [2006] EWCA Civ 1390, [2007] QB 462 and Cohen v General Medical Council [2008] EWHC 581 (Admin).

Panel's Decision

45. The panel first considered the personal component of impairment and whether Mr Atkinson had acted, and was liable in the future to act, so as to put service users at unwarranted risk of harm, for the purposes of the first limb of the test in CHRE v Grant. In so doing, the panel first considered whether Mr Atkinson's criminal conduct had been such as to pose a risk to the health, safety and well-being of the public. It then went on to consider whether there was a risk of conduct being repeated by following the steps in Cohen v GMC and asking itself whether Mr Atkinson's conduct was easily remediable, whether it had been remedied and whether it was likely to be repeated.
46. In relation to the first of those steps, the panel concluded that, although Mr Atkinson's conduct had not caused any actual harm as his communication have been with an undercover

police officer rather than a child, it had nevertheless posed a significant risk to the health, safety and well-being of the public. In coming to this conclusion, the panel had regard to the criminal and sexualised nature of Mr Atkinson's conduct, to the fact that his conduct had been directed towards a person who he thought to be a 13-year old child and to the escalating, exploitative and coercive nature of that conduct. In this latter regard, the panel noted that Mr Atkinson's messages have progressed from sexually explicit chat to requests for images and then to requests for more explicit images. The panel also noted that, the Probation Service, in its Pre-Sentence Report stated, *"It is evident that in committing these offences, he engaged in highly-distorted sexualised thinking and behaviour regarding female children."*

47. The panel next considered whether Mr Atkinson's conduct was capable of remedy. The panel took the view that remediation would be difficult as his conduct was, by its nature, attitudinal and behavioural. Accordingly, the panel concluded that, although remediation would be possible, it would require Mr Atkinson to develop significant insight into his conduct and a deep understanding of its causes to undertake thorough and structured remedial activity.
48. However, when the panel moved on to consider whether, and what extent, Mr Atkinson's conduct had actually been remedied, it could find little independent evidence of such insight, understanding or remedial activity. To be more specific:
 - The panel noted that, prior to the offences of which he had been convicted, there had been no regulatory concerns about Mr Atkinson and he had been of previous good character. Similarly, the Mitigation Note which had been prepared for Mr Atkinson's criminal trial and the remarks of the sentencing judge when pronouncing sentence made reference to Mr Atkinson's "genuine remorse and shame". Similar expressions of remorse had been recorded in the notes of telephone conversations between Mr Atkinson and Social Work England's solicitors (as detailed above). However, neither his previous good character nor his expressions of remorse appeared to have led Mr Atkinson to develop any real or significant insight into his conduct or its actual or potential effects on service users, colleagues and the profession generally. Such insight as he had demonstrated appeared to be limited to concern for the effects on his relationship with his family and to a comment made in a telephone conversation with Social Work England's solicitors to the effect that he was very upset about his actions' "impact on other people". Indeed, from the comments recorded in telephone attendance notes, it appeared to panel that, rather than developing insight, Mr Atkinson displayed an increasing tendency to minimise the significance of his conduct by referring to it as a single mistake, attributing it to problems with drugs, alcohol and his health, emphasising his previous good record as a social worker and criticising what he perceived to be a judgemental attitude on the part of Social Work England.
 - In terms of remediation, the panel noted that the Pre-Sentence Report from the Probation Service stated that Mr Atkinson had informed them that he had had contact with the Lucy Faithful Foundation since November/December 2020, and was accessing online support from them with a view to accessing Engage-Plus programme. The report

also mention that Mr Atkinson was attempting to access support through cognitive behavioural therapy and mental health services. However, there was no independent evidence before the panel to show that any such support had been accessed by Mr Atkinson or produced any positive outcome. Indeed, the panel considered that, if Mr Atkinson had sought and received such support, it would have expected to see the results of that support in terms of his developing an understanding of the causes of his behaviour. In this respect, the panel noted that the report from the Probation Service stated that Mr Atkinson had appeared unable explain how he was able to maintain his role as the manager of a social work team and yet also commit the offences of which he was convicted. From information available from panel, this position did not appear to have changed. Similarly, the panel had received no confirmation as to whether Mr Atkinson had completed the 40-day rehabilitation activity requirement which formed part of his sentence and no information as to the activities to be undertaken as part of that requirement.

49. Given Mr Atkinson's lack of insight and remediation, the panel considered that there was a real risk of his previous conduct being repeated. This risk of repetition led the panel to conclude that, without some form of restriction on his practice, Mr Atkinson would continue to pose a risk to service users. Accordingly, the panel decided that Mr Atkinson's fitness to practise was currently impaired in terms of the need to protect the health, safety and well-being of the public.
50. In arriving at its views on the risk of Mr Atkinson's conduct being repeated the panel noted that the Pre-Sentence Report from the Probation Service had rated both his risk of reoffending and his risk of sexual recidivism as low (not "very low", as reportedly suggested by Mr Atkinson in a telephone conversation with Social Work England's solicitors) and had assessed him as posing a medium risk of causing serious harm. However, those risk assessments did not reduce the panel's assessment of the risk posed by Mr Atkinson for the following reasons:
 - Those risk assessments were not current but had been made prior to the completion of the Pre-Sentence Report on 15 February 2021.
 - The Probation Service's assessment of Mr Atkinson's risk of reoffending did not appear to be based on thorough assessment of Mr Atkinson as an individual but rather on a statistical tool which, according to the report, produced a result on the basis of Mr Atkinson's age, gender and criminal history. From the comments of the author of report, Mr Atkinson's lack of previous offending behaviour appeared to be a key driver in producing the assessment.
 - Similarly, the assessment of Mr Atkinson's risk of sexual recidivism was derived from a risk matrix tool, which produced a result based on "some simple facts about his criminal and personal history" but which, according to report, "does not take account of all of the factors that can affect an individual's offending behaviour".

- The assessment of Mr Atkinson's risk of causing serious harm was made using the National Probation Service Offender Assessment System risk framework as a guide. The assessment's conclusions that there were "identifiable indicators of risk of serious harm" and that "Mr Atkinson has the potential to cause serious harm", caused the panel concern and appeared to support its own conclusions regarding the risk posed by Mr Atkinson. Although the assessment also concluded that Mr Atkinson was unlikely to cause such harm, that conclusion was conditional upon there being no "change in circumstances, for example, loss of accommodation, relationship breakdown, drug or alcohol misuse". The report also stated that the risk of Mr Atkinson causing serious harm would be increased by a relapse into drug and alcohol misuse, sexually-distorted thinking and behaviour, and unmonitored use of internet-enabled devices. However, there was no evidence before the panel to assure it that any of those factors had not materialised, or would be unlikely to materialise, since the Pre-Sentence Report was written. In particular, there was no evidence of Mr Atkinson having benefited from any "probation-based intervention engaging in him work to address his sexually-inappropriate behaviour", as referred to in the report, or of his having successfully completed the rehabilitation activity requirement which formed part of his sentence.
- The Pre-Sentence Report had also mentioned that "these [Mr Atkinson's] offences occurred in 2019, and since that time Mr Atkinson has been on bail in the community with no further reports of concern about his behaviour". However, this provided very limited reassurance to the panel as it was hardly surprising that Mr Atkinson would seek to restrain his behaviour whilst under police investigation and, subsequently, awaiting sentence.
- In addition, the risk assessments made by the Probation Service and that performed by the panel were made for different purposes. The Probation Service's assessments were made in order to categorise Mr Atkinson in order inform the court's decision on sentence. By contrast, the panel's assessment was made in furtherance of Social Work England's statutory objective of protecting the health, safety and well-being of the public. For this purpose, given the seriousness of Mr Atkinson's conduct, the panel needed evidence of both insight and remediation in order to satisfy itself that there was little or no risk of that conduct being repeated. However, as stated above, such evidence (including, with regard to remediation, independent evidence) appeared to be lacking.

51. The panel next considered the public component of impairment. In this regard:

- The panel considered that Mr Atkinson's criminal conduct had brought the social work profession into disrepute for the purposes of the second limb of the test in CHRE v Grant and that informed and reasonable members of the public with an understanding of the present case would be shocked to learn that, having attempted to commit to child sex offences, Mr Atkinson had been allowed to practise without restriction.

- Similarly, the panel considered that protecting young and vulnerable children was a fundamental aspect of social work and that by committing the offences of which he was convicted, Mr Atkinson had, in effect, breached one of the fundamental tenets of the social work profession for the purposes of the third limb of the test in CHRE v Grant. The panel took the view that this breach was rendered all the more serious by Mr Atkinson's being the manager of a local authority's children's services team at the time he committed offences. In addition, the panel considered that Mr Atkinson's conduct had breached standard 9.1 of the Health and Care Professions Council's Standards of Conduct, Performance and Ethics, in that this conduct would clearly have shaken the public's trust and confidence in the social work profession.
- For the above reasons, the panel considered that Mr Atkinson's fitness to practise was impaired in that some form of restriction on his practice was required in order to maintain public confidence in social workers and proper professional standards.

Decision on sanction

Submissions

52. Mr Harris, on behalf of Social Work England, requested the panel to make an order removing Mr Atkinson's entry from Social Work England's register. In support of this request, Mr Harris made the following submissions:
 - As a social worker, Mr Atkinson had been placed in a position of trust in relation to the most vulnerable members of society. However, his actions had made him wholly unsuited to remaining in that position.
 - Referring to paragraph 104 of Social Work England's Sanctions Guidance and the provisions in regulation 26 of the Social Workers Regulations 2018 for automatic removal from the register of social workers convicted of sexual offences, Mr Harris suggested that the panel should adopt a similar approach when deciding on sanction.
 - Referring to paragraph 92 of the Sanctions Guidance, Mr Harris submitted that, given the nature and seriousness of Mr Atkinson's conduct, this was not a case which fell short of requiring removal from the register in that there was a fundamental incompatibility between that conduct and remaining on the register.
 - Mr Harris then submitted that, in the circumstances, the requirements of paragraph 97 of the Sanctions Guidance were satisfied in that, in the present case, 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.
 - In support of that submission, Mr Harris referred the panel to relevant parts of the judgement in the case of Bolton v Law Society [1994] 1 WLR 512, CA, including "To maintain this reputation and sustain public confidence in the integrity of the profession

it is often necessary that those guilty of serious lapses are not only expelled but denied readmission. ...” and “Because not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction [i.e. of a disciplinary tribunal] than on the ordinary run of sentences imposed in criminal cases”.

Legal Advice

53. The panel accepted the advice of the Legal Adviser on sanction. This included reference paragraphs 12 and 13 of Schedule 2 to the Social Workers Regulations 2018, Social Work England’s Sanctions Guidance and the cases of Bolton v Law Society [1994] 1 WLR 512, CA, R (Low) v General Osteopathic Council [2007] EWHC 2839 (Admin), Council for the Regulation of Health Care Professionals v General Dental Council (Mr Alexander Fleischmann) [2005] EWHC 87 and Obukofe v General Medical Council [2014] EWHC 408 (Admin).

Panel’s Decision

54. In arriving at its decision on sanction the panel was mindful that:
- In determining the sanction which it should impose on Mr Atkinson, the panel should not seek to punish him for his criminal conduct but to achieve Social Work England’s overarching objective of “protection of the public”.
 - As defined in s.37(2) of the Children and Social Work Act 2017, that concept comprises protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in social workers; and promoting and maintaining proper professional standards for social workers.
 - Any sanction imposed by the panel on Mr Atkinson must be proportionate in that it must be the minimum necessary for those purposes.
55. The panel first sought to identify any mitigating and aggravating factors in relation to Mr Atkinson’s conduct.
56. The panel identified the following mitigating factors:
- There had been no previous regulatory findings against Mr Atkinson.
 - No actual harm resulting from Mr Atkinson’s criminal conduct (although this was due to the fact that he was exchanging messages with an undercover police officer and could therefore be considered fortuitous).
57. In terms of aggravating factors, the panel identified the following:
- For a social worker, attempting to commit sexual offences involving children represented an extremely serious breach of the trust and confidence which the public place in the social work profession. In Mr Atkinson’s case, this was exacerbated by the fact that he worked in children’s services. It was further exacerbated by his being in a managerial position. This also meant that his criminal activity breached the trust

placed in him by the members of the team which he managed and, as noted by the sentencing judge, tainted the reputation of the local authority which employed him.

- Mr Atkinson's criminal activity had taken place over a number of days and using several devices and platforms. The panel considered his messages to be manipulative and they involved escalating demands for intimate images from a person he believed to be a child. In the circumstances, Mr Atkinson's actions did not comprise a single incident; nor could they be considered to be "a moment of madness".
- When interviewed by the police, both immediately after his arrest in 2019 and subsequently in 2020, Mr Atkinson had denied, or fail to admit, his criminal activity. He had also attempted to conceal that activity by deleting an application which he had used in the course of it.

58. The panel then considered each the courses of action open to it in ascending order of severity.

59. The panel did not consider that taking no further action, giving advice or making a warning order were appropriate sanctions because those options would not place any restriction on Mr Atkinson's practice. Therefore:

- As noted in the Sanctions Guidance, those options would not be appropriate to address a situation, such as in the present case, where a panel has determined that there is a current risk to the health, safety and well-being of the public.
- They would fall foul of the principle in Fleischmann that a registrant convicted of a serious offence should not normally be permitted to return to unrestricted practice whilst they are still subject to a criminal sentence (in this case, the suspended sentence imposed on Mr Atkinson, of which, at the date of this hearing, approximately 10 months of the period of suspension remained).

60. In any event, the panel considered that, given the nature and seriousness of Mr Atkinson's conduct, taking no further action, giving advice or making a warning order would be wholly inadequate to promote and maintain public confidence and proper professional standards for social workers in England.

61. The panel did not consider that a conditions of practice order would be adequate or appropriate in the present case for the following reasons:

- Mr Atkinson's conduct arose from attitudinal and behavioural issues, rather than from any lack of competence or capability. As indicated in paragraph 84 the Sanctions Guidance, conditions of practice were less likely to be appropriate to address such issues. In this regard, the panel considered that the nature of Mr Atkinson's conduct was such that it would be difficult to formulate conditions which would be adequate to address the risk which he posed to the health, safety and well-being of service users. In particular, the panel could not conceive of any conditions which would

prevent Mr Atkinson from engaging in what the Pre-Sentence Report described as “highly-distorted sexualised thinking and behaviour regarding female children.”

- Conditions of practice would also be inappropriate as the activities which had led to the present regulatory finding of impairment had occurred outside the work environment.
- The panel also noted that, unless and until the DBS bar on Mr Atkinson’s working with children or vulnerable adults was removed, any conditions of practice which the panel might be able to formulate and impose would be ineffectual and conditions would therefore be unworkable.
- In any event, the panel did not consider that conditions of practice would be adequate to maintain public confidence and proper professional standards.

62. The panel gave careful consideration to making a suspension order in respect of Mr Atkinson. However, the panel decided that, in Mr Atkinson’s case, a suspension order would not be adequate or appropriate. Given the nature and seriousness of the offences of which Mr Atkinson had been convicted and given the aggravating factors described above (and, in particular, the first and second of those factors), the panel considered that his conduct was fundamentally incompatible with his remaining a registered social worker. It considered that his behaviour struck at the heart of the role of a social worker which was, in essence, to protect vulnerable service users. By contrast, Mr Atkinson’s actions completely undermined the trust and confidence which service users, colleagues and the public must have in him as a member of a caring profession. In the circumstances, the panel reached the firm decision that only a removal order would be adequate to ensure that both public confidence in social workers, and proper professional standards for social workers were maintained.
63. In arriving at the above decision, the panel had followed the approach suggested in paragraph 96 of the Sanctions Guidance. That paragraph stated that where, as in the present instance, a panel considered that a case warranted a period of suspension longer than one year on the grounds of public confidence, the panel should also consider whether that case might be more appropriately disposed of by means of a removal order.
64. The panel had also noted that a suspension order could allow a social worker time to develop insight and remedy their practice, whilst, at the same time, protecting service users and the wider public against any risk posed by the social worker. However, the panel considered that, whilst it was not beyond the bounds of possibility that Mr Atkinson might, during the period of a three-year suspension order, develop insight into, and remedy, his previous conduct. Nevertheless, his conduct had been so serious and so detrimental to the maintenance of public confidence and professional standards, that a removal order was required on those grounds notwithstanding any possibility that the risk posed by Mr Atkinson health, safety and well-being of service users and the wider public might, at some point in the future, diminish or be extinguished.

65. In the circumstances, the panel concluded that a removal order was the appropriate and proportionate sanction in the present instance as no other outcome would be enough to protect the public and to maintain public confidence and proper professional standards.
66. **FINAL ORDER: that Mr Atkinson's entry be removed from Social Work England's register of social workers.**

Interim Order

67. Mr Harris, on behalf of Social Work England, asked the panel to exercise its discretion under paragraph 11(1)(b) of Schedule 2 to the Social Workers Regulations 2018 to make an interim suspension order for a period of 18 months in order to cover both the period during which Mr Atkinson could lodge an appeal against the panel's decision to make a removal order and the time required to dispose of any such appeal.
68. The panel understood from Mr Harris and the Hearings Officer that an interim suspension order had already been made against Mr Atkinson under paragraph 8 of Schedule 2 to the Social Workers Regulations 2018 and that, if the panel were to make a further interim order under paragraph 11 of Schedule 2, Social Work England would intend to invite the panel conducting the next review of that interim order to revoke it.
69. Having heard and accepted the Legal Advisers advice on its powers under paragraph 11 of Schedule 2 to the Social Workers Regulations 2018 and having considered the matter, the panel decided to make the order requested by Mr Harris. The reasons for this decision were as follows:
 - The panel had already concluded that it was necessary to impose some form of restriction on Mr Atkinson's practice because he posed a risk to the health, safety and well-being of the public and in order to maintain public confidence and proper professional standards. Accordingly, for the same reasons, the panel decided that some form of interim restriction on his practice was required during the period in which Mr Atkinson could lodge an appeal and whilst any appeal which he might make was ongoing.
 - Similarly, in terms of the type of interim order which it should make, the panel decided that, for the reasons given above in relation to the final order, a conditions of practice order would be inadequate to protect the health, safety and well-being of the public and to maintain public confidence and proper professional standards during the period in which Mr Atkinson could lodge an appeal and whilst any appeal which he might make was ongoing. Accordingly, the panel considered that the appropriate form of interim order was an interim suspension order.

- With regard to duration, the panel decided that an interim suspension order for a period of 18 months would be adequate to cover the period which it might take to dispose of an appeal by Mr Atkinson against the final order, should he make one.
70. In arriving at the above decisions, the panel took account of the effect which making an interim suspension order would have on Mr Atkinson. Leaving aside Mr Atkinson's stated intention not to return to social work and ignoring the fact that he was not currently working as a social worker and was prevented from doing so by the existing interim suspension order and the DBS barring him from working with children and vulnerable adults, the panel recognised that making an interim suspension order against Mr Atkinson would prevent him from working as a social worker and that, as a result, he could suffer a detriment both financially, professionally and otherwise. However, the panel considered that, in the present case, the need to protect the health, safety and well-being of the public and to maintain public confidence and professional standards, outweighed such detriment which might be suffered by Mr Atkinson.
71. **INTERIM ORDER: that Mr Atkinson be suspended from practising as a social worker for a period of 18 months.**

Right of Appeal

72. Under paragraph 16(1)(a) of Schedule 2 to 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.
73. Under paragraph 1(2) of Schedule 2 to 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.
74. 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.
75. 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

76. Under paragraph 15(2) and 15(3) of Schedule 2 to 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.
77. 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.