



Social Worker: Sean Patrick  
Kershaw  
Registration Number: SW28483  
Fitness to Practise  
Final Order Review Meeting:

Meeting Venue: Remote meeting

Date of meeting: Thursday 23 June 2022

Final Order being reviewed:  
Suspension Order – (expiring 03 August 2022)

Meeting Outcome: Removal Order (to take effect upon expiry of current suspension  
order on 3 August 2022)

## Introduction and attendees

1. This is the second review of a 12-month suspension order originally made by a panel of adjudicators at a final hearing on 8 January 2021. The first review took place on 6 January 2022 and the panel on that occasion decided to extend the suspension order by 6 months.
2. Mr Kershaw did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP and their written submissions are set out within the notice of hearing letter.

| Adjudicators        | Role                    |
|---------------------|-------------------------|
| Karen McArthur      | Lay Chair               |
| Sarah (Sally) Scott | Social Work Adjudicator |

| Hearings Team/Legal Adviser | Role             |
|-----------------------------|------------------|
| James Dunstan               | Hearings Officer |
| Nasreen Akhtar              | 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 interim order review hearing dated 14 June 2022 and addressed to Mr Kershaw at his address as it appears on the Social Work England Register;
  - An extract from the Social Work England Register detailing Mr Kershaw's registered email address;
  - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 14 June 2022 the writer sent the notice by email to Mr Kershaw's registered email address;
5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard to 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 Kershaw in accordance

with Rules 16, 44 and 45 of the Social Work England (Fitness to Practise) Rules 2019 (as amended) (the “Rules”).

Proceeding with the interim order review as a meeting:

7. The notice of the final order review hearing informed Mr Kershaw that in line with the 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 21 June 2022. 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 also took into account a telephone attendance note dated 14 June 2022 confirming that a text message had been sent to Mr Kershaw by Capsticks LLP, with the password for the documents referred to in the notice of hearing.

9. The panel also took into account a further email dated 21 June from Capsticks LLP, sent on behalf of Social Work England. The email included the following:

*“if you wish to attend the electronic hearing or intend to submit written submissions, please confirm your intention by no later than 4pm today (21 June 2022). Unless we hear from you to the contrary, we shall assume that you will not be attending the electronic hearing and Social Work England may decide to deal with the review as a meeting.”*

10. The panel accepted the advice of legal advisor. The panel was reminded that its discretion to proceed in absence is one which should be exercised with care. The legal advisor referred the panel to the guidance in Adeogba v GMC [2016] EWCA Civ 162 which makes clear that the first question the panel should ask is whether all reasonable efforts have been taken to serve the social worker with notice. Thereafter, if the panel is satisfied on notice, the discretion whether or not to proceed must be exercised having regard to all the circumstances of which the panel is aware, with fairness to the Social Worker being a prime consideration, but balancing that with fairness to the regulator and the interests of the public.

5. Mr Kershaw did not respond to the formal notice of hearing which indicated that the review would proceed by way of a meeting unless he objected by 21 June 2022. Mr Kershaw has not responded to that notice, and he has not objected to the hearing being conducted as a meeting. He has made no application for an adjournment.
6. The panel, having had regard to Rule 43, determined that it was fair and reasonable and in the public interest to proceed in the absence of . He is aware of the meeting and the panel considered he has voluntarily waived his right to attend. This is a mandatory review and in these circumstances the panel concluded that it was fair,

appropriate, expeditious and in the public interest to proceed in the absence of Mr Kershaw.

10. 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”*

11. 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).

#### 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.

The current order is due to expire at the end of 3 August 2022.

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

13. The panel conducting the final hearing (“the final hearing panel”) found all of the allegations against Mr Kershaw to be proved. Those allegations were as follows:

- 1. In or around October 2015, you provided alcohol to Child 1 namely vodka Jägermeister.*
- 2. In or around October 2015, you engaged in sexual activity with Child 1 in that you:*
  - a. Received oral sex from Child 1.*
- 3. The matters set out in paragraphs 1 and 2 amount to misconduct.*
- 4. By reason of your misconduct, your fitness to practise is impaired.*

#### Background:

14. Mr Kershaw was employed as a social worker by Middlesbrough Council from 4 November 2002 until his dismissal on 22 November 2016. During that time, he held a number of roles within Children’s Services.

15. On 20 November 2016 Child 1 made an allegation to the police that Mr Kershaw had engaged in a sexual act with her approximately 12 months earlier, when she had been 15. At that time she was living with Mr Kershaw. She was not a service user.
16. Mr Kershaw voluntarily attended Middlesbrough police station on the same day and was interviewed under caution. During the interview he admitted that in or around October 2015 he had given some alcohol to Child 1, specifically he allowed her to taste some Jägermeister and Vodka and Red Bull. He went on to say that after Child 1 had gone to bed he had watched some pornography on his own in the living room, undressed and begun masturbating. Child 1 and another child were upstairs in their bedroom at the time. While he was masturbating, Child 1 returned to the room without warning. He stated that Child 1 had attempted to engage him in sexual activity and put his penis in her mouth. He stated:

*"A couple of seconds had gone by and like I said then that's when the reality of everything just kicked in for me and I started not feeling very well... [She] had pushed me pushed back here, pushed in to the bottom of the sofa and [she] just obviously initiated oral sex and then for that split couple of seconds I was obviously still what's going on and then the reality, like I've said the reality and I was pulling myself in like that and then tried to get off".*

17. He was interviewed again on 25 April 2018 and gave a similar account.
18. On 22 November 2016 his employment was terminated in light of his disclosures at the police interview.
19. Criminal proceedings were commenced. Mr Kershaw was found not guilty of rape by intentional penetration (of the mouth of a girl aged 15) by a jury at Teesside Crown Court on 26 April 2019.
20. Mr Kershaw engaged with the 'Lucy Faithful Foundation', a child protection charity dedicated to preventing child sexual abuse. He underwent interviews with Mr Peter Holden a Senior Practitioner at the Lucy Faithful Foundation. Mr Holden prepared a report, dated 27 August 2019. At paragraph 78 of his report, Mr Holden recorded:

*"[Mr Kershaw] appears to have been shocked and taken aback by [Child 1]'s appearance in the room and, in his account, to have tried to stop the sexual physical contact after "a few seconds"."*

21. Mr Holden concluded, at paragraph 90 of his report:

*"Mr Kershaw is not, in my assessment, a criminally-minded person, nor attitudinally predisposed to viewing children in sexual terms. Having in mind all the above I believe there is a very low likelihood of him sexually abusing or harming a child in the*

*future.”*

22. Following Child 1’s allegations, Mr Kershaw had been referred to the Health and Care Professions Council (the “HCPC”), his regulator at the time. Social Work England took over as his regulator in December 2019. Between 6 and 8 January 2021 a fitness to practice hearing took place before panel of adjudicators (“the final hearing panel”).

#### Findings made by the final hearing panel on 08 January 2021:

23. At the final hearing on 8 January 2021, Mr Kershaw said:

- He regretted his behaviour.
- He was drinking to excess at the material time.
- His engagement with the Lucy Faithful Foundation had been extremely beneficial. He had been unable to access therapeutic assistance recommended as there was no local authority funding. However, he did access counselling with the Samaritans and also accessed sessions of counselling through his General Practitioner, which he found helpful.
- He had learnt and adopted processes in his personal life and has abstained from drinking since 2019.
- He actively reflects on his actions and opens up to his partner, which he had not previously done.
- He accepted that his actions would have been damaging to Child 1 and to others.
- He accepted how his behaviour would be perceived by members of the public and those within the social work profession but did not believe his fitness to practise was impaired.
- He would “love” to return to social work.
- Whilst he has not been working in social work for several years, he maintains subscriptions to magazines and updates his knowledge of statutory developments.

24. Mr Kershaw admitted allegation 1 and accepted that his behaviour was “*wrong and out of character throughout this situation*”. He denied allegation 2 on the basis that he had not engaged in sexual activity because Child 1 caught him “*off guard*”, he had disengaged from her as soon as was reasonably possible and his penis had only been in her mouth for “*a few seconds*”. However, when he gave evidence, he accepted that “*I could have reacted a lot quicker in that moment*” and when it was put to him that for those few seconds he had engaged in sexual activity with Child 1, he said “*I accept that it was a failure and agree with what you are saying*”. When asked why he had not reacted quicker he said that he was “*in a moment*”.

25. The final hearing panel made the following findings in respect of Allegation 2:

*‘27. The panel accepts the unchallenged facts that whilst Mr Kershaw was masturbating in the living room, Child 1 entered the room, made a brief comment, and went immediately to him, when he was sat naked, with his penis erect and his legs open. The panel accepts that Mr Kershaw did not initiate sexual activity with*

*Child 1 and that she, within a short period from entering the room, pinned his arms to one side, bent down and took his penis in her mouth. However, the panel is satisfied that in noticing Child 1 enter the room, Mr Kershaw had sufficient opportunity to protect his modesty and prevent her from taking his penis in her mouth. He accepts that he could have reacted quicker once his penis entered her mouth and that he did not do so as he was "in a moment". The panel is satisfied that he was in a moment of sexual excitement. Whilst he did not initiate the sexual activity, and whilst he was surprised by the actions of Child 1, he did not push her away as quickly as he could as he was in a moment of sexual arousal. This period lasted a brief period before he came to his senses and pulled away. For that brief period, sometime between two and a few seconds, whilst his penis was in the child's mouth, he was engaging in sexual contact until he reacted and pulled away. To that extent, the allegation is proved.'*

### The decision of the final hearing panel on 08 January 2021 on impairment:

26. In respect of impairment the final hearing panel said the following:

*'36. The panel is satisfied that the proven allegations amount to misconduct. Both giving alcohol and engaging in sexual activity with a 15-year-old satisfies the definition of misconduct in that they are acts that fall far short of what would be proper in the circumstances. The actions were in breach of paragraph 9.1 of the requisite professional standards, as outlined above. The sexual activity with Child 1, albeit brief and not initiated by Mr Kershaw, was particularly serious misconduct. Mr Kershaw's actions on the day, namely masturbating naked in an area in which a child could walk in unannounced, failing to cover himself immediately and failing to react as quickly as he could have once his penis entered the mouth of Child 1, cannot be sensibly characterised as anything other than serious.*

*37. Having found that the conduct amounts to serious misconduct, the panel considered whether Mr Kershaw's fitness to practise is impaired at the present time.*

*38. Whilst the panel accepts that often sexual misconduct is not remediable, it found that the unique circumstances in this case are that Mr Kershaw's actions are remediable.*

*39. The panel is generally impressed with Mr Kershaw's engagement and candour with both the criminal and regulatory authorities. The panel is satisfied that he bitterly regrets the events that give rise to these allegations.*

*40. He has demonstrated remediation in engaging with not only these proceedings but also the Lucy Faithful Foundation. He has also accessed counselling and has abstained from alcohol.*

*41. He has demonstrated insight in accepting that he should not have acted as he did on the night in question, and could have pulled away quicker. He has clearly reflected significantly on his behaviour. He has also demonstrated insight into the effects of his*

*behaviour on Child 1. He has not shown any animosity towards her or sought to justify his behaviour as being a result of her actions. He has taken responsibility for his own actions. He has also demonstrated insight into the effects of his behaviour on his family, the social work profession and the wider public.*

*42. The panel therefore concluded that Mr Kershaw has demonstrated adequate insight and remediation.*

*43. Whilst prepared for a different purpose, the Lucy Faithful Foundation report was prepared by a suitable professional at an appropriate organisation. The panel accepts and adopts the conclusions within, namely that Mr Kershaw is not sexually attracted to children and that he poses a low risk of sexual harm to them. In doing so the panel also took into account that the proven misconduct was a solitary incident, of extremely short duration, which was not initiated by Mr Kershaw, which he bitterly regrets and which has not been repeated.*

*44. However, the panel is satisfied that the actions of Mr Kershaw, namely engaging in sexual activity with a child, having received oral sex from her, albeit briefly, is so abhorrent that members of the public would be appalled if there was any finding other than that Mr Kershaw's fitness to practise being impaired. The panel is satisfied that public confidence in social workers in England would not be maintained by a finding that his fitness to practise is not impaired.*

*45. The panel therefore finds that the allegations proved amount to serious misconduct and that for the reasons outlined above Mr Kershaw's fitness to practise as a social worker is currently impaired. Whilst the panel accept that there is not an ongoing risk to public protection, a finding of impairment is necessary for the wider public interest.'*

#### Decision of the final hearing panel on 8 January 2021 on sanction:

27. At the final hearing on 8 January 2021, Social Work England invited the final hearing panel to conclude that only a removal order would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England because a lesser sanctions would be insufficient to meet those objectives

28. Mr Kershaw accepted the panel's decision on impairment and the impact of his behaviour on public confidence and professional standards. He asked the panel to take into account that he had remediated, accessed support and was not a risk to the public. He accepted that taking no action, giving advice or issuing a warning were not appropriate but asked the panel to consider conditions of practice instead of removal.

29. The panel made the following decision:

*'53. The panel reminded itself that it has concluded that Mr Kershaw poses a low risk of harm to the public, and that his fitness to practice is impaired to satisfy the wider public interest, namely to promote and maintain public confidence and proper professional standards.*



54. *In relation to the conduct that formed the first allegation, the panel noted that allowing Child 1 to consume alcohol was inappropriate but that the amount she was allowed to drink was not significant. She was permitted to taste the alcoholic drinks and was not given unlimited access to alcohol. Alcohol was not given to the Child in pursuance of causing her to become disinhibited. This is not a case, nor has it been alleged, that is akin to grooming a child for sexual exploitation.*

55. *The panel considered that allegation 1 in itself would not merit a sanction that restricts or prevents Mr Kershaw from practising as a social worker.*

56. *Allegation 2, namely sexual activity with a child, is a different matter.*

57. *The panel considered the aggravating features. Sexual activity with a child is in itself extremely serious and Mr Kershaw's actions are further aggravated by the fact that he chose to masturbate to pornography, naked, in a communal area of a house in which he knew Child 1 was upstairs. His actions were undertaken whilst he was under the influence of alcohol.*

58. *The panel considered the mitigating features. The sexual activity was not initiated nor was it invited by Mr Kershaw, it was extremely brief and was aborted by him. The misconduct arose over five years ago. There have been no previous or subsequent similar incidents. Mr Kershaw has been assessed by a suitable professional as not being sexually attracted to children and of being of low risk of sexual harm to children. The panel noted that he has engaged with criminal and regulatory authorities, and made admissions of his wrongdoing when they were first put to him. He has conveyed his understanding of the seriousness of his actions and his respect for the regulatory proceedings, during which he has been candid and forthright. He has engaged with the Lucy Faithful Foundation and with counselling has abstained from alcohol since 2019. He has demonstrated adequate remediation and insight, as addressed in the findings and reasons on impairment.*

59. *The panel considered Ms Gillet's submissions with care. Whilst her reference to[the above] case law was appropriate, each case must be determined on its particular circumstances. One notable, albeit not in itself determinative, distinction between the case referred and the case of Mr Kershaw is that no criminal conviction has resulted in the latter.*

60. *The panel finds 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.*

61. *The panel finds that no workable conditions could be formulated to address the wider public interest in this case. The panel notes that the misconduct did not relate to Mr Kershaw's professional performance. Conditions cannot be formulated to monitor Mr Kershaw's private life and, in any event, it has been concluded that he is of low risk of repeating the misconduct.*

62. *The panel finds that a suspension order is appropriate and proportionate in all of the circumstances of the case and satisfies the public interest.*

63. *The panel is conscious that members of the public would generally be appalled at the prospect of a social worker being allowed to remain on the register of social workers despite having engaged in sexual activity with a child. However, the panel notes the unusual and unique circumstances of the misconduct, as outlined above. The panel is satisfied that a well-informed and reasonable member of the public, in possession of all the information that has been before the panel, would not require an otherwise capable, committed and experienced social worker to be removed from the register in these circumstances, particularly in light of the weighty mitigating features outlined above.*

64. *The panel therefore finds that removal from the register is not proportionate in all of the circumstances of this case.*

65. *In consideration of the length of the suspension, the panel had regard particularly to paragraph 93 of the sanctions guidance, which states that they should balance the need to protect the public interest against the risk that prolonged suspension may result in de-skilling. The panel noted that Mr Kershaw has not worked as a social worker since his dismissal from Middlesbrough Council in November 2016. It also noted paragraph 96 of the sanctions guidance that where a suspension is aimed primarily at maintaining confidence in the profession or setting the professional standards to be observed, then a sanction of suspension of up to one year may be appropriate.*

66. *In considering the guidance and the nature of the misconduct the panel finds that a suspension of practice for 12 months would be appropriate and proportionate in all of the circumstances to maintain public confidence in the profession and to maintain professional standards. The length of the suspension is appropriate and proportionate as it marks the seriousness of Mr Kershaw's unacceptable behaviour, whilst also ensuring that he is not excluded from social work for a period of time that would result in him being de-skilled.'*

67. *Before the expiry of the suspension, the order will be reviewed by a review panel. The review panel may be assisted by the following information from Mr Kershaw:*

- a. A written statement outlining his updated reflection on his misconduct and the regulatory proceedings, together with an update as to his personal circumstances,[including his use of alcohol and;*
- b. Details of how Mr Kershaw has maintained his knowledge of social work to ensure that he has not become deskilled.'*

#### **Review Hearing on 20 December 2021:**

30. Mr Kershaw was unable to attend the review hearing on 20 December 2021 because of work commitments. However, he notified Social Work England that he was happy for the review to proceed in his absence. On 17 December 2021 he sent Social Work England an e-mail in which he said:

*"In respect of the current suspension order I believe I have addressed the concerns raised at the original panel. The main challenges I have faced surround CPD as many training providers I have approached including the LSCB have stated that my suspension should be spent before offering training in areas including child protection. I have also attempted to undertake voluntary work in order to build upon my skills and experience in the sector but again have faced the same issue. The issue of alcohol as noted in the proposed COP no longer remains a concern however I acknowledge the need to undertake further training in this area. With regards to a further extension of the order, again I acknowledge the position however I am concerned that any further extensions will further deskill me and impact on a meaningful return to practice."*

31. At the review hearing, Social Work England submitted that the review should proceed in Mr Kershaw's absence. However, that panel decided not to proceed in Mr Kershaw's absence. It considered that if the review were adjourned Mr Kershaw was likely to attend and that there were issues that Mr Kershaw may wish to address at the hearing. In its decision it stated:

*'18. The panel noted that Social Work England's submission, contained in the Notice of Hearing, was "there remains a risk to the public including the wider public interest in permitting the Social Worker to return to unrestricted practice. In the absence of clear evidence both of remediation and that he has fully met the recommendations of the previous panel, Social Work England invite the Panel to find that the Social Worker's fitness to practise continues to be impaired".*

*19. Social Work England maintained that in view of the absence of evidence of remediation a further period of suspension of six months should be imposed to meet the high public interest concerns and to allow Mr Kershaw to further address the concerns.*

*20. Alternatively, if this submission was not accepted, Social Work England invited the panel to impose a conditions of practice order of 12 or 18 months. The suggested conditions included close supervision of practice, direct supervision of any work carried out with any person under 18 years old, and 6 hours CPD in relation to safeguarding children and young adults, professional boundaries and alcohol misuse.*

*21. The panel noted that the substantive panel's actual finding was that Mr Kershaw "has demonstrated adequate insight and remediation" and "Whilst the panel accept that there is not an ongoing risk to public protection, a finding of impairment is necessary for the wider public interest".*

*22. A reviewing panel would therefore need to consider with care this submission from Social Work England and would wish to have as much information as possible from Mr Kershaw, particularly as he had expressed the opinion, in his email of 17 December 2021, that he had "addressed the concerns raised at the original panel".*

23. The panel had no information as to Mr Kershaw's present employment and no detail as to the CPD which he said that he had undertaken in his reflective statement, prepared as long ago as February 2021. It noted also an apparent contradiction in relation to the subject of alcohol misuse. In his email of 17 December quoted above, Mr Kershaw stated that this was no longer an issue, yet he also appeared to acknowledge the need for further training in this area. These are matters that could be addressed through attendance at a hearing and Mr Kershaw has previously expressed a wish to attend.

24. For all these reasons, the panel has concluded that this review ought not to be conducted in the absence of Mr Kershaw today. The original allegations, and the findings of the substantive panel, were extremely serious and any review of the substantive order needs to be undertaken with great care, respecting the decision of the substantive panel, and in the light of as much information as to the present position as can reasonably be obtained.'

### Review Hearing on 6 January 2022:

32. Mr Kershaw attended the review hearing on 6 January 2022 and provided oral evidence.

33. At this review hearing the panel stated the following:

*"53. the panel considered that the final hearing panel had made a clear finding that Mr Kershaw had shown adequate insight and remediation and the risk of repetition of the misconduct that gave rise to the proven allegations was minimal. It had also made clear at paragraph 61 of its decision (set out at paragraph 27 above) that his misconduct was not related to his professional practice.*

*54. The panel considered whether Mr Kershaw had met the recommendations of the final hearing panel referred to by Mr Moran (set out at paragraph 32 above).*

*55. The panel acknowledged that Mr Kershaw had provided a reflective statement in February 2021 that adequately addressed his misconduct and the regulatory proceedings.*

*56. The panel also considered that although Mr Kershaw had not provided a more up to date statement dealing with his alcohol use, he had consistently maintained that alcohol misuse was no longer an issue. He had repeated this in his oral evidence and had given the example of his ability to cope with recent difficulties without recourse to alcohol. The panel accepted this evidence that alcohol use is not an issue for him.*

*57. However the panel did not consider that Mr Kershaw had provided adequate evidence or information to show that he had maintained his knowledge of social work in order to avoid becoming deskilled. Although he accepted that he had read Social Work England's guidance for suspended social workers, he had been able to produce a log of*

*his CPD activities or testimonials. The panel did not consider that the absence of a PDP was relevant as the guidance makes clear that this is only required when there are issues relating to the social worker's professional practice that need to be addressed.*

*58. The panel noted that Mr Kershaw had proactively engaged with the regulatory process and had given to what he would do when he returned to practise. It also considered that Mr Kershaw had been very frank in his evidence. The panel acknowledged that it was likely the nature of Mr Kershaw's misconduct and the fact he was currently subject to a suspension order could make it challenging to obtain practical training or undertake relevant voluntary work. However it did not consider that Mr Kershaw had shown that there were insurmountable obstacles to his undertaking relevant training or relative paid or unpaid work. The panel acknowledged Mr Kershaw's preference for practical learning, however it did not consider that this justified the minimal nature of the online training he had chosen to access.*

*59. The panel noted that Mr Kershaw himself accepted that he had other priorities that had prevented him complying with the final hearing panel's recommendations and that as a result he had not done enough.*

*56. The panel concluded that overall Mr Kershaw had not met the recommendations of the final hearing panel.*

*57. The panel took into account the serious nature of Mr Kershaw's misconduct and considered that a member of the public in possession of all the relevant facts would expect Mr Kershaw to comply with the recommendations of the final hearing panel before he was permitted to return to unrestricted practice and that to allow him to do so before this was done, would undermine confidence in the social work profession.*

*58. The panel therefore decided that while Mr Kershaw's practice was not impaired on the basis that he posed a risk to service users or the wider public, it remained impaired on the basis of the wider public interest is served by maintaining confidence in the social work profession by upholding professional standards.*

*59. The panel therefore decided that Mr Kershaw's fitness to practise remains currently impaired on the basis of the public interest component only.*

34. At this hearing, the panel concluded that Mr Kershaw's fitness to practise remained impaired on the basis of the public interest component only and decided that a suspension order continued to be an appropriate and proportionate sanction. It further considered that a further suspension for a period of 6 months would give Mr Kershaw the opportunity to act upon the recommendations.

35. The panel acknowledged that it could not bind a future panel. However, they determined that "a future reviewing panel would expect Mr Kershaw to attend the

review hearing and it would be of assistance to that panel if he was able to provide evidence that he has undertaken significant steps that would facilitate his return to the register without restriction. This may include:

- A written reflective piece setting out the details of how he intends to regain the trust of colleagues, service users and the wider public.
- An updated written statement that should include details of all CPD activities he has attempted to undertake
- Details of CPD activities he has undertaken
- Testimonials from work colleagues and any organisation for which he has undertaken paid or unpaid work.”

### Evidence and Submissions:

36. The panel noted the following written submissions from Social Work England as outlined in the notice of hearing dated 14 June 2022:

*“Subject to any further engagement and evidence of remediation and continued professional development provided by the Social Worker to the review panel, Social Work England submit that there remains a risk to the public, including the wider public interest, in permitting the Social Worker to return to unrestricted practice.*

*In the absence of clear evidence of both remediation and that he has fully met the recommendations of the previous reviewing panel, Social Work England invite the panel to find that the Social Worker’s fitness to practise continues to be impaired. The previous reviewing panel identified a number of recommendations that the Social Worker should seek to follow, in order to demonstrate that his fitness to practise is no longer impaired.*

*The Social Worker has provided no new evidence since the time of the last review hearing and has disengaged with the regulatory process. Consequently, he has not taken the remedial steps to demonstrate that he is no longer impaired or that he has avoided becoming de-skilled over the period since November 2016 (and principally since the Suspension Order was imposed in January 2021) and further de-skilled since the further suspension order of 6 January 2022.*

*In the event that the Panel consider the Social Worker’s fitness to practise to still be impaired, then Social Work England invite the Panel to consider a further period of suspension of six months, to enable the Social Worker a further opportunity to re-engage with the regulatory process and address the concerns and recommendations of the previous panels. Social Work England will invite the Panel to repeat the recommendations of the previous panel. It is submitted that if these are followed this will address any public protection concerns arising from de-skilling and ensure safe return to practice. If the Social Worker does not re-engage with the Fitness to Practise*



*process then at any subsequent review Social Work England may ask the Panel to consider a removal order.*

37. The panel noted that there was no response or submissions from Mr Kershaw and that since the review hearing in January, he has dis-engaged from the regulator.

#### Panel decision and reasons on current impairment:

38. 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 has exercised its own judgement in relation to the question of current impairment.
39. The panel had careful regard to all of the documentation provided and to the submissions made on behalf of Social Work England.
40. The panel heard and accepted the advice of the legal adviser and was reminded that it was carrying out a comprehensive review of the information before it and must firstly decide whether there is sufficient evidence to be satisfied that Mr Kershaw's fitness to practise is no longer impaired. Furthermore, that he is fit to return to unrestricted practice. If the panel decides that his fitness to practise is currently impaired then it should consider what sanction to impose. The panel was reminded that the purpose of a sanction is not to punish Mr Kershaw but is to protect the public and that any sanction imposed must be proportionate. The panel was reminded of the need to consider Social Work England's Sanctions Guidance 2019. 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.
41. The panel was aware that it was required to exercise its professional, independent judgement to determine whether Mr Kershaw's fitness to practise is currently impaired by reason of the matters found proved at the original hearing and if so, whether the existing order or another order needs to be in place to address the public interest. The panel considered whether the concerns that led to the findings in January 2021 remain. The panel was also aware that there is a persuasive burden on Mr Kershaw to demonstrate at any review hearing that he has fully acknowledged the issues which led to the original finding and has addressed them sufficiently *'through insight, application, education, supervision or other achievement...'* *Abrahaem v GMC* [2008] EWHC 183(Admin).
42. Previous panels had made recommendations as to the type of evidence which could contribute to addressing the issue of remediation and the panel concluded that overall Mr Kershaw had not met these recommendations.

43. The panel took into account the very serious nature of Mr Kershaw's misconduct and considered that a member of the public in possession of all the relevant facts would expect Mr Kershaw to comply with the recommendations of the previous panels before he was permitted to return to unrestricted practice and that to allow him to do so before this was done, would undermine confidence in the social work profession.
44. The difficulty for the panel at this final order review hearing is that Mr Kershaw has stopped engaging with the regulator. The panel noted that Mr Kershaw completed a reflective piece in February 2021, shortly after the substantive hearing. The panel acknowledged that this addressed the issue of insight, however, there were concerns in relation to remediation. Specifically, the panel were concerned that for this hearing Mr Kershaw had not acted upon any of the recommendations from the previous panel, which were to produce:
- A written reflective piece setting out the details of how he intends to regain the trust of colleagues, service users and the wider public.
  - An updated written statement that should include details of all CPD activities he has attempted to undertake
  - Details of CPD activities he has undertaken
  - Testimonials from work colleagues and any organisation for which he has undertaken paid or unpaid work
45. The panel noted that the information regarding CPD that Mr Kershaw produced for the first review panel but considered that this was insufficient and lacked substance, particularly given the length of time he has had to remediate since the final hearing in January 2021. The panel considered the remediation required was not excessive or difficult.
46. The panel also noted an ambiguity in relation to alcohol use, which was a factor in the findings and would have been assisted by an opportunity to clarify this with Mr Kershaw.
47. In the absence of any current information from Mr Kershaw, the panel could not be satisfied that he had fully remediated his practice.
48. The panel was concerned at Mr Kershaw's lack of recent engagement.
49. Taking all of this into account the panel decided that Mr Kershaw's practice remained impaired on the basis of the wider public interest. The panel was mindful of the need to declare and uphold proper standards of behaviour and maintain public confidence in the profession.



### Decision and reasons on sanction:

50. Having found Mr Kershaw's fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case.
51. The panel was mindful that the purpose of any sanction is not to punish Mr Kershaw 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 Kershaw's interests with the public interest and by considering each available sanction in ascending order of severity.

### No Action

52. The panel concluded that, in view of the nature and seriousness of Mr Kershaw's impairment and in the absence of exceptional circumstances, it would be inappropriate to take no action because it would be insufficient to maintain public confidence and uphold the reputation of the profession.

### Advice or Warning

53. The panel then considered whether to issue advice or a warning. The panel concluded that issuing advice or a warning would be insufficient because it would be insufficient to maintain public confidence and uphold the reputation of the profession.

### Conditions of Practice Order

54. The panel went on to consider a conditions of practice order. The panel reached its own independent conclusion about the appropriateness of such an order.
55. The panel agreed with the decision of the final hearing panel that had concluded:

*"61. The panel finds that no workable conditions could be formulated to address the wider public interest in this case. The panel notes that the misconduct did not relate to Mr Kershaw's professional performance. Conditions cannot be formulated to monitor Mr Kershaw's private life and, in any event, it has been concluded that he is of low risk of repeating the misconduct."*

56. Given Mr Kershaw's dis-engagement from his regulator, the panel could not have confidence that he would be willing to comply and work with conditions.

### Suspension Order

57. The panel concluded that Mr Kershaw had been given clear guidance by previous panels as to what steps he needed to take to evidence remediation and re-gain the skills to return to

unrestricted practice. He has provided no plans regarding remediation and provided no further information that he has meaningfully and substantively completed any CPD. The panel were concerned that despite a clear recommendation from the previous panel about him attending future reviews, he has failed to do so and has completely dis-engaged with the regulator. The panel considered that the public needed to have confidence that the regulator would act in a case as serious as this and where remediation has not been fully evidenced, despite having a significant period of time to do so. The panel could have no confidence that an extension to the suspension order would result in full remediation or Mr Kershaw addressing the de-skilling concerns.

58. In light of this, the panel concluded that a suspension order, in the wider public interest was not appropriate. It :

- Would not uphold public confidence in the social work profession
- Would not uphold proper standards of the profession or maintain confidence in the regulator

#### Removal Order

14. 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 the only appropriate sanction to protect the wider public interest and to maintain public confidence in the profession; to uphold proper professional standards and to maintain confidence in the regulator.

#### Right of Appeal:

15. 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.

16. 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.

17. 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.

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

#### Review of final orders

19. 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.

20. 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.