



Social Worker: Abraham Kuria

Registration Number: SW104279

Fitness to Practise

Final Order Review Meeting:

Meeting Venue: Remote meeting

Date of Meeting: 30 June 2022

Final Order being reviewed: Suspension Order (expiry on 10/08/2022)

Hearing Outcome:

Removal Order (to take effect upon expiry of current Suspension Order on 10 August 2022)

Introduction and attendees

1. This is the third review of a final conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee of the Health and Care Professions Council ('HCPC') on 11 February 2019. The order was subsequently reviewed on 30 June 2020 where the conditions of practice were varied and extended, by 18 months. The order was reviewed for a second time, on 05 January 2022, where the conditions of practice order was varied to a suspension order and imposed for a period of six months.
2. Mr Kuria did not attend and was not represented.
3. Capsticks LLP represented Social Work England and their written submissions were set out within the Notice of Hearing letter.

Adjudicators	Role
Rachel Cook	Chair
Sabraj Akhtar	Social Work Adjudicator

Hearings Team/Legal Adviser	Role
Alicia Whitehouse	Hearings Officer
Mollie Roe	Hearings Support Officer
Francesca Keen	Legal Adviser

The Allegation found proved and which resulted in the imposition of a final order was as follows:

'Whilst registered as a Social Worker and employed by Hampshire County Council, you:

1. In relation to Service User 1, you did not:
 - a. Undertake a complete and/or accurate assessment;*
 - b. Explore the mobility of Service User 1 and/or refer him to a Physiotherapist and/or Nursing Staff;*
 - c. Record whether funding had been agreed for a placement;*
2. *In relation to Service User 2, you did not:*

- a. *Complete an assessment for a Capital Depleter, which had been allocated to you on 3 December 2015 until 4 January 2016;*
 - b. *Complete an accurate FAB referral which delayed the funding process in relation to Service User 2.*
3. *In relation to Service User 3, you did not:*
 - a. *On 7, 8, 14 and 15 January 2016, complete and/or update the duty actions.*
4. *In relation to Service Users 4 and 5, you did not:*
 - a. *Communicate effectively with the family of Service Users 4 and 5;*
 - b. *Complete a clear care plan;*
5. *In relation to Service User 6, you did not:*
 - a. *Undertake an accurate risk assessment; and/or*
 - b. *Act on a safeguarding alert from Rapid Response;*
6. *In relation to Service User 7, you did not:*
 - a. *Inform the Agency that double up care was needed until 3 March 2016, despite completing the assessment on 16 February 2016;*
7. *In relation to Service User 8, you did not:*
 - a. *Complete an updated and/or accurate assessment on 15 March 2016.*
8. *In relation to Service User 9, you did not: a) Action a new CA12 and/or send an action to Duty to consider the case.*
9. *In relation to Service User 10, you did not:*
 - a. *Complete an assessment for a Capital Depleter, which had been allocated to you on 14 December 2015 until 8 January 2016;*
 - b. *Contact Service User 10's son on 8 January 2016 when you had said you would;*
 - c. *Undertake an accurate and/or complete assessment;*
10. *In relation to Service User 11, following a visit on 29 March 2016, you did not:*
 - a. *Complete the case notes;*
 - b. *Record an assessment.*

11. *The matters described at particulars 1 to 10 constitute misconduct and/or lack of competence.*
12. *By reason of your misconduct and/or lack of competence your fitness to practice is impaired.'*

Service of Notice:

4. The panel considered a bundle of documents titled 'Service & Supplementary Bundle 30 June 2022' which contained a letter, headed 'Notice of Hearing' ('the Notice'), dated 17 June 2022. The Notice informed Mr Kuria that Adjudicators (hereafter 'the panel') had been appointed to review the Suspension Order, to which he was subject, on 30 June 2022 at 09.30am at an 'electronic hearing'. The Notice also invited Mr Kuria to either confirm his intention to attend by 4pm on 24 June 2022 or to make written submissions by that time. The Notice informed Mr Kuria *'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'*.
5. The Notice also contained instructions on how to submit written instructions and sent Mr Kuria a form to return asking him to indicate whether he would be attending the hearing or making submissions.
6. The panel noted, in the same bundle of documents, a statement of service dated 28 June 2022, which the panel accepted proved that the Notice was sent on 17 June 2022, by email, to the email address held by Social Work England on the Social Work England Register.
7. Additionally, the panel also noted a further email was sent to Mr Kuria, by Capsticks Solicitors (acting on Social Work England's behalf), dated 24 June 2022 and timed at 12.24pm, reminding Mr Kuria of the deadline for notification in respect of his engagement at the hearing.
8. The panel accepted the advice of the Legal Adviser in relation to service of notice.
9. Having regard to Rules 16, 43 and 44 of the Social Work England Fitness to Practise Rules (as amended) ('the Rules'), and all of the information presented to it in relation to service of notice, the panel was satisfied that notice of this application had been served on Mr Kuria in accordance with the Rules.

Proceeding as a meeting, in the absence of Mr Kuria:

10. The panel noted, from the documentation provided to it, that Mr Kuria had neither replied to the Notice, nor sent written submissions to be considered by the panel.
11. The panel accepted the advice of the Legal Adviser and had regard to Rule 16(c) 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’.

12. The panel determined, on the advice of the Legal Adviser, that because the practical effect of proceeding as a meeting was to conduct the review without any submissions from Mr Kuria and without his express agreement, the panel should have regard to the test for considering whether to proceed in the absence of Mr Kuria at a hearing.
13. The panel also accepted the advice of the Legal Adviser in relation to the factors it should take into account when considering this application. This included reference to the Social Work England guidance ‘Service of Notices and Proceeding in the Absence of the Social Worker’, Rule 43 of the Rules and the cases of *R v Jones [2003] UKPC; General Medical Council v Adeogba [2016] EWCA Civ 162*. The panel also considered all of the information before it.
14. The panel noted that Mr Kuria had been sent notice of today’s hearing and was satisfied that he should be aware of today’s hearing. The panel considered that Social Work England had made all reasonable efforts to serve the Notice on Mr Kuria and that he had been informed of the date, time and venue of the hearing. The panel determined that it was reasonable in the circumstances of this case and was in the public interest to proceed with the hearing because it was satisfied that Mr Kuria had been properly notified of the hearing.
15. The panel also noted that Mr Kuria had previously engaged in the regulatory proceedings and had contacted Social Work England, on 26 March 2022, to discuss an appeal of an earlier review panel’s decision. Consequently, the panel formed the view that Mr Kuria was capable of engaging in the regulatory proceedings and that his non-attendance and non-engagement was voluntary and should be considered as a deliberate waiver of his right to participate in person. He had not sought an adjournment of the proceedings and the panel was not therefore satisfied that adjourning today’s proceedings would be likely to secure his attendance at a future hearing.
16. Further, the panel also considered the public interest need to deal with substantive review matters expeditiously and having weighed the interests of Mr Kuria in regard to his attendance at the hearing with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Mr Kuria’s absence.
17. 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.’
18. Given that Mr Kuria had been put on notice of the potential for the hearing to be convened as a meeting, by Capsticks Solicitors in the Notice, and Mr Kuria had not made any submissions in respect of this proposal despite reminders to do so, 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:

19. 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.
20. The current order is due to expire on 10 August 2022.

The previous final order review panel on 05 January 2022 determined the following with regard to impairment:

'In considering the question of current impairment of Mr Kuria's fitness to practise, 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.

The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and the first review panel. There was no new documentation provided by Mr Kuria.

The panel accepted the advice of the legal adviser. In reaching its decision, the panel was mindful of the need to protect the public and the wider public interest in declaring and upholding proper standards of behaviour and maintain public confidence in the profession.

The panel first considered whether Mr Kuria's fitness to practise remains impaired.

The difficulty for the panel at this substantive order review meeting is that Mr Kuria has not engaged with the process since 13 January 2021 when he reported health difficulties. The reality is that the panel has not been given any up to date information as to whether Mr Kuria has fully developed insight into his failings, such that he is able to explain how he came to make the failures, so as to be able to identify how to avoid making similar errors in future. For example, he could gain insight into his failures through reflection. The panel noted that it was suggested in the Council's disciplinary hearing that with more guidance from management he would be unlikely to find himself in a similar situation again, but the panel has no current information before it to assist it in ascertaining whether this would be the case.

In the panel's view, Mr Kuria's key failures included safeguarding and risk assessments. These are matters which are the bedrock of a social worker's professional practice.

The panel was of the view that each of these areas was capable of remediation. For example, there are courses and training in respect of safeguarding which the Registrant could undertake. However, as he has not engaged with the conditions of practice order imposed, for almost a full year, the panel has no evidence before it that Mr Kuria has, in

fact, reflected on his failures, thought about what steps he would take to ensure that he did not repeat those failures, or thought about how such failures may impact upon the confidence of the public in the profession. In the absence of information from Mr Kuria as to his current position, there was no evidence that he had remediated his practice.

In all the circumstances, given the absence of information to demonstrate that Mr Kuria now had good insight and had remediated his practice, the panel could not rule out that there remained a risk of repetition of the failures by Mr Kuria. Any repetition would immediately place the public at risk. The panel therefore concluded that Mr Kuria's fitness to practise was currently impaired.'

The previous final order review panel on 05 January 2022 determined the following with regard to sanction:

'Having found Mr Kuria's fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel had regard to the submissions made by Social Work England along with all the information available and accepted the advice of the legal adviser.

The panel considered the submissions by Social Work England, inviting the panel to consider imposing a suspension order for 6 months. The panel also took into account the Sanctions Guidance published by Social Work England.

The panel was mindful that the purpose of any sanction is not to punish Mr Kuria, 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 Kuria's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action

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

Advice or Warning

The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Kuria's ability to practise and is therefore not appropriate where there is a current risk to public safety. In any event, the deficiencies in Mr Kuria's practice had the potential to have wide-ranging adverse consequences and therefore some restriction on his practise is required. Therefore, the panel concluded that issuing advice or a warning would be inappropriate and insufficient to meet the public interest.

Conditions of Practice Order

The panel went on to consider a conditions of practice order. The panel took the view that Mr Kuria's deficiencies are potentially capable of being remedied and was satisfied that, in theory, appropriate, workable conditions could be formulated. The conditions already formulated and later amended by previous panels were capable of addressing the issues raised if Mr Kuria had participated meaningfully with the revised order.

The panel had regard to paragraph 88 of the Sanctions Guidance last updated 26 November 2019, which reads 'It is not the role of the regulator to take responsibility for directing how the social worker remediates. It is the social worker's professional responsibility to restore their fitness to practise, and part of any assessment of successful remediation will be how they have identified and acted on this personal responsibility'. Mr Kuria's responses during the HCPC disciplinary hearing indicated to the panel that Mr Kuria may be capable of resolving his failings and willing to abide by conditions. However, in the absence of Mr Kuria in this review, or detailed and compelling written submissions from him, the panel could not be satisfied at this present time that Mr Kuria was either willing or able to abide by conditions.

Suspension Order

The panel, therefore, had to move on to consider a suspension order. Clearly such an order would meet public protection needs and is certainly sufficient to assure the public and professionals that professional failures and transgressions are appropriately dealt with in the public interest. The panel was satisfied that suspension was the appropriate and proportionate order.

The panel considered that the length of the order should be for 6 months. This was with a view to allowing Mr Kuria the time and opportunity, first to re-engage with the regulatory process, and secondly to demonstrate remediation and to develop insight. The panel concluded that this would take a minimum of 6 months to achieve. Therefore, the suspension period reflects the amount of time that Mr Kuria may need to reflect on the panel's findings and devise a plan of action targeted towards a return to the register unrestricted.

This panel did not seek to limit the discretion of a future reviewing panel, who will look at whether Mr Kuria is ready to resume work as a social worker, but it did consider that such a panel may be assisted by:

The participation of Mr Kuria, in person if that is possible at a later date or remotely through the TEAMS facility, by telephone, or through his written submissions;

A reflective piece identifying his insight into the actions that gave rise to the allegations and their impact on others;

Evidence of training relevant to the assessment and management of risk, safeguarding, structured record keeping, and any other relevant training.

Removal Order

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 would be disproportionate at the present time. The public is fully protected by a suspension order and the way remains open for Mr Kuria to resume the process of returning to practice without restriction.'

Social Work England submissions:

21. The panel noted that Social Work England's submissions, in respect of the Order, were contained within the Notice sent to Mr Kuria and were as follows:

'Social Work England submit that the Substantive Suspension Order should be extended for a further 6 months from the end of its current term. It is submitted that the restriction remains necessary for the protection of the public including the wider public interest as the Social Worker has still not remedied deficiencies in his practice.

Since the last review on 5 January 2022, the Social Worker contacted Capsticks on 14 January 2022. The Social Worker stated that that (sic) his mother had been unwell, he had to leave the country and did not have access to the internet. He queried about appealing the decision and was informed that he did have the right to appeal.

The Social Worker then contacted the case review team on 26 March 2022. The Social Worker stated that he wished to appeal the decision as he had been unwell for the last few months and that he had travelled overseas (sic) to a red list country. The Social Worker further stated that the two issues had a direct impact on his ability to respond to the previous review. No further details were provided with respect to his illness and travel abroad.

The Case Review Team responded on 28 March 2022, informing the Social Worker that his right to appeal expired on 3 February 2022 and was reminded of the recommendations made by the previous reviewing panel.

There has been no further contact from the Social Worker since 26 March 2022. No evidence of insight, remediation or training has been provided. The recommendations of the last Panel have not been followed. Social Work England therefore invite the Panel to find that the Social Worker's fitness to practise remains impaired as the concerns have not been remediated. A further suspension order will protect the public whilst allowing the Social Worker one last opportunity to re-engage with the process, provide evidence of mitigating circumstances and to demonstrate the efforts made to keep his knowledge and skills up to date.

Social Work England therefore invite the Panel to extend the current Suspension Order for a further 6 months. Should the Social Worker continue to disengage, then absent an indication of his desire to remain on the register and remediate the concerns, Social Work England may seek a removal order at a future review.'

Social Worker submissions:

22. Mr Kuria did not provide any submissions for the panel to consider as part of this review.

Panel decision and reasons on current impairment:

Panel's approach

23. In considering the question of current impairment, the panel undertook a comprehensive review of the final order in light of the current circumstances. Whilst it took into account the decision of the previous panels it exercised its own judgement in relation to the question of current impairment.
24. The panel also took account of the documents provided to it by Social Work England and had regard to the evidence and Social Work England's submissions.
25. The panel considered the relevant professional standards guidance and accepted the advice of the Legal Adviser, which had drawn its attention to Schedule 2 paragraph 15 of The Social Workers Regulations 2018 and the proper approach to be adopted when considering current impairment.

Panel's decision

26. The panel first considered whether Mr Kuria's fitness to practise remains impaired. In making its decision, the panel had regard to both the personal and public elements of impairment. It bore in mind that in deciding whether Mr Kuria's fitness to practise is still impaired it should follow the approach of Dame Janet Smith endorsed in the High Court in CHRE v NMC and Grant [2011] EWHC 927 (Admin).
27. The panel heard and accepted the advice of the Legal Adviser. In reaching its decision, the panel was mindful of the need to protect the public and the wider public interest in declaring and upholding proper standards of behaviour and maintain public confidence in the profession.
28. The panel noted that Mr Kuria has not engaged in the regulatory proceedings in any meaningful way. He attended the second day of the substantive hearing (October 2018), which was subsequently adjourned and he had exchanged sporadic emails with Social Work England, the last one being on 26 March 2022, regarding appealing the previous reviewing panel's decision.
29. Further, the panel noted that Mr Kuria had not taken any steps towards remediating his previous identified, and accepted, failings and the panel noted that Mr Kuria had also not provided any evidence of insight into his conduct, nor had he provided details of how he had kept his skills and knowledge up to date. For example, by submitting continuing professional development that he may have completed. Additionally, the panel noted that he did not engage with the conditions of practice imposed, nor had he followed the recommendations of the previous reviewing panel when it suggested that he: attend a future review hearing; provide a reflective piece identifying his insight into the actions that gave rise to the Allegation; and provide evidence of relevant training.

30. The panel considered that whilst Mr Kuria's failings were capable of remediation, as identified by the previous reviewing panel, it could not be confident that Mr Kuria possessed the requisite insight, or that he has taken any steps, to remediate his failings. Consequently, the panel determined that it could not be confident that Mr Kuria's behaviour would not be repeated. The panel was also not satisfied, that in all the circumstances presented to it, that Mr Kuria does not still pose a real and on-going risk to the public and that public confidence in the profession would not be undermined should he be permitted to return to unrestricted practice.
31. Accordingly, taking all of the aforementioned into account, the panel concluded that, with the personal and public components in mind, and taking into account Mr Kuria's limited engagement, his fitness to practise remains impaired on both the personal and public components of impairment.

Sanction

32. The panel next went on to consider sanction. The panel had regard to Social Work England's 'Sanction Guidance' and to the submissions provided by Social Work England.
33. The panel bore in mind that sanction is a matter for its own independent judgment and that the purpose of a sanction is not to punish Mr Kuria but to protect the public. Further, the panel also had regard to the fact that any sanction must be proportionate, so that any order must be the least restrictive order that would protect the public interest, including public protection.

No Action

34. The panel first considered taking no action. The panel concluded, for the same reasons outlined by the previous reviewing panel, that in view of the serious nature of the concerns, which remained unaddressed, it would be inappropriate to take no action because this course of action would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

35. The panel next considered whether this was a case where an advice or warning was the appropriate sanction. The panel concluded that due to the continuing concerns about Mr Kuria's fitness to practise, that neither an advice nor warning would be appropriate or sufficient to protect the public. Neither sanction would be subject to a review and would not adequately address the fundamental, serious and wide-ranging concerns that have been identified in this case.

Conditions of Practice Order

36. The panel next considered a conditions of practice order. The panel shared the view of the previous reviewing panel that in cases such as this, where deficiencies in practice are admitted and are capable of being remedied, conditions of practice could be formulated to address the risks identified. However, in this case the panel also determined, given Mr Kuria's non-engagement with the previous conditions of practice orders imposed, combined with the lack

of information provided by him as to whether he would be willing and/or able to comply with conditions of practice, that a conditions of practice was not appropriate or workable.

Suspension

37. Having determined that a conditions of practice order would not be appropriate, the panel next considered extending the current suspension order versus imposing a removal order.
38. The panel considered paragraphs 93 to 98 of the sanctions guidance. In particular, the panel noted paragraph 93 stated:

'In deciding on the period of suspension, decision makers should consider the need to protect the public and the wider public interest. They should balance this against the risk that prolonged suspension may result in deskilling.'
39. The panel noted that Mr Kuria qualified as a social worker in 2015 and that the Allegation accepted by Mr Kuria was a serious one and related to multiple failings in respect of core social work practice and concerned eleven service users during Mr Kuria's assessed and supported year in employment ('ASYE'). The panel had regard to the fact that Mr Kuria had been the subject of an order restricting his social work practice (2019 – 2022) longer than he had been practising as a social worker (2015 – 2016). The panel also had regard to the fact that Mr Kuria had not engaged in any meaningful way with the regulatory proceedings (since February 2019) and to the fact that he had not provided any evidence of remediation or ongoing continuing professional development or training. Having regard to all of the circumstances of this case, and without any evidence to the contrary, the panel determined that there is a real risk that Mr Kuria has become deskilled as a practitioner.
40. Further, the panel was also satisfied that a member of the public, appraised of all of the facts of this case, would be satisfied that Mr Kuria has been provided with every opportunity to demonstrate insight and remediation, during the last three years (2019 -2022) whilst subject to an order and that he had failed to do so.
41. 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. Whilst the panel was satisfied that a further suspension order would provide the public with the necessary protection, in terms of the identified risks posed by Mr Kuria, the panel did not consider that public confidence in Social Work England, as the regulator for the social work profession, would be maintained if a further suspension order were imposed. In forming this view, the panel had regard to Mr Kuria's lack of engagement, the fact that he had been subject to conditions of practice orders previously and had failed to comply or engage with them and to the fact that he had also been subject to a previous suspension order, with recommendations, which he also failed to address.
42. Consequently, the panel was of the view that the appropriate order is one of Removal and that the current order should be varied to a removal order to come into effect from the expiry of the current suspension order.

Right of Appeal:

43. 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.
44. 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.
45. 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.
46. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practise Rules 2019.