



Social Worker: David Best

Registration Number: SW21511

Fitness to Practise

Final Order Review Meeting:

Meeting Venue: Remote Meeting

Date of meeting: 12 August 2022

Final Order being reviewed: Suspension Order

Hearing Outcome: Removal Order

Introduction and attendees

1. This is the first review of the substantive suspension order imposed for a period of 12 months on 27 August 2021.
2. Mr Best did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP but did not attend. Their written submissions are set out within the Notice of Hearing sent to Mr Best on 29 July 2022.

Adjudicators	Role
Frank Appleyard	Chair
Stella Elliott	Social Worker Adjudicator

Hearings Team/Legal Adviser	Role
Khadija Rafiq	Hearings Officer
Gabriella Berettoni	Hearings Support Officer
Margaret Obi	Legal Adviser

Service of Notice:

4. The panel of adjudicators ('the panel') had regard to the documents contained within the service and supplementary bundle, which included the following:
 - An extract from the Social Work England Register confirming the email and postal address held by Social Work England for Mr Best.
 - A copy of the Notice of Hearing, dated 29 July 2022, addressed to Mr Best at his postal and email address as they appear on the Register. This followed a Notice of Review which was sent to Mr Best on 6 July 2022.
 - A signed copy of a Statement of Service, signed by a paralegal at Capsticks LLP, confirming that on 29 July 2022, Docucentre were instructed to send the notice of this review and enclosures to Mr Best's registered email address and to his registered postal address by next day special delivery.

- A copy of the Royal Mail Track and Trace receipt which confirmed that the Notice of Hearing was delivered by post and signed for on 30 July 2022 at 09.12.
5. The panel accepted the advice of the legal adviser in relation to service of the Notice of Hearing.
 6. The Notice of Hearing confirms the date and time of the hearing and that it would take place remotely. In these circumstances, the panel was satisfied that Mr Best has been given reasonable notice of the substantive review hearing. The panel concluded that the Notice of Hearing had been properly served on Mr Best in accordance with Rules 44 and 45.

Proceeding with the final order review as a meeting:

7. The panel noted that the Notice of Hearing stated:

“If you wish to attend the electronic hearing, please confirm your intention **by no later than 4pm on 8 August 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** [emphasis in the original]. If Social Work England do hold a meeting, the adjudicators 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 had 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.”

9. The panel was satisfied that it would be fair, proportionate, and appropriate to conduct the review in the form of a remote meeting for the following reasons:
 - a. The panel noted that Mr Best did not attend the substantive hearing and there has been no engagement from him since the 12-month Suspension Order was imposed. This is despite several letters from Social Work England reminding Mr Best of the recommendations that had been made by the substantive hearing panel. Furthermore, Mr Best has been given a reasonable opportunity to attend an oral hearing or to make written representations. In these circumstances, the panel concluded that it is reasonable to infer that Mr Best’s non-engagement is deliberate and that he has voluntarily waived his right to participate in these proceedings.

- b. There has been no application to adjourn and no indication from Mr Best that he would be willing to attend on an alternative date and therefore re-listing this review hearing would serve no useful purpose.
- c. The panel acknowledged that there may be some disadvantage to Mr Best in proceeding with the hearing in his absence. However, the panel was satisfied that, in choosing not to request a hearing or submit any written representations, any disadvantage to Mr Best was significantly outweighed by the strong public interest in ensuring that the review hearing is considered and determined as expeditiously as possible.

Review of the current order:

- 10. This final order review hearing falls under Part 5 of the Regulations, Schedule 2 paragraph 15 of the Regulations and Social Work England's Fitness to Practise Rules.
- 11. The current order is due to expire on 23 September 2022.

Allegations Found Proved and Background

Allegations (as found proved)

- 12. The allegations found proved at the substantive hearing are as follows:
 - 1. *On or about 25 May 2018, assaulted Person A, including by:*
 - a. *pushing Person A off the bed;*
 - b. *punching and/ or kicking Person A on the head;*
 - c. *punching and/or kicking Person A on the body; and/ or*
 - d. *strangling Person A.*
 - 2. *The matter set out in paragraph 1 above constitutes misconduct.*
 - 3. *By reason of your misconduct your fitness to practise is impaired.*
- 13. On 6 November 2018, the HCPC received a referral regarding Mr Best from Person A.
- 14. Person A met Mr Best, in or around May 2017, when she began attending the Black Dragons Ju-Jitsu Club, where he was one of the instructors. In approximately January 2018, Person A and Mr Best entered into a relationship, following which Person A would stay overnight at Mr Best's home.
- 15. It is alleged by Person A that Mr Best assaulted her in the early hours of 25 May 2018. She reported the incident to the police. The police arrested and interviewed Mr Best who denied assaulting Person A and stated that Person A had attacked him during a "Night

Terror” which she often suffered from. He had defended himself only by pushing and restraining Person A using only reasonable force. After interviewing Mr Best, the police decided to close the case on 25 May 2018, following which Person A submitted a ‘Victim’s Right to Review’. Person A subsequently received a letter acknowledging that the decision to close the case had been premature, that disproportionate weight had been given to Mr Best’s account, and that *“further review of the extent and level of your injuries may determine whether his account is plausible or reasonable in the circumstances”*. Although the case was re-opened on or around 15 July 2018, the police subsequently decided again to take no further action.

16. Mr Best was registered as a social worker with the HCPC at the time of the incident, although he was not employed as a social worker at that time.
17. The substantive hearing panel found the facts proved in their entirety. The substantive hearing panel concluded that the facts amounted to misconduct and in relation to impairment it stated:

“142. The panel considered that it had found Mr Best had engaged in a serious, deliberate and unjustified assault on a vulnerable person and there was no evidence he had adequate insight into the causes or impact of his behaviour or any evidence of remediation. In the circumstances the panel considered there had to be a real risk that Mr Best would behave in a similar manner, if similar circumstances arose in his personal life in the future. The panel therefore concluded that to this extent [Mr Best] posed an ongoing risk to the public.

143. The panel considered there was no evidence Mr Best posed any direct physical risk to service users or that he had put service users at risk in the past. However the panel considered it was reasonable to infer that his lack of understanding about the impact of domestic violence raised real concerns about his ability to carry out adequate risk assessments, where domestic violence was an issue. The panel considered that this could potentially put vulnerable service users at risk of harm. The panel therefore concluded that to this extent Mr Best posed an ongoing risk to service users.

144. ...[T]he panel considered members of the public in possession of all the relevant facts would consider that Mr Best’s behaviour undermined both their confidence in him as a social worker and their confidence in the social work profession as a whole. The panel also considered that other members of the social work profession would be shocked by Mr Best’s behaviour and consider it to be a breach of professional standards and to reflect very badly on their profession.”

18. At the sanction stage the substantive hearing panel stated:

“167. The panel also considered that Mr Best’s conduct was potentially remediable, if he were prepared to take the action necessary to address his misconduct outlined by

the panel... . The panel considered that although Mr Best was currently unwilling or unable to address the concerns identified by the panel, a suspension order would allow him time to reassess what happened with Person A and reflect on his conduct. The panel considered that if Mr Best did this it was possible he would take steps to address the concerns raised by his misconduct and achieve remediation. The panel took into account that when and if Mr Best reads this decision it will be the first time that he will have engaged sufficiently to receive a full explanation of what he has done wrong and he may decide to take steps to retain his status as a social worker, which he has stated is important to him.

168. The panel considered that Mr Best's misconduct was serious for the reasons already given. However, it related to a single isolated incident and was not so serious that it was incompatible with Mr Best remaining on the Register. The panel therefore considered that in all the circumstances suspension was a sanction that would properly reflect the seriousness of his misconduct, uphold professional standards and maintain public confidence in social workers in England and their regulator."

Social Work England's Written Submissions:

19. Social Work England in its written submissions invited the panel to impose a further 4 month suspension order today for the following reasons:

"Social Work England invite the Panel to extend the suspension order by four months to enable Mr Best to engage with the recommendations made at the conclusion of the Final Hearing.

When imposing sanction at the Final Hearing the Panel did consider Mr Bests Practice was capable of remediation. They considered that conditions of practice were, in theory, workable, but given Mr Best's lack of engagement they were concerned he would not abide by them. They imposed a 12 month suspension order with the following recommendations:

- [Mr Best's] attendance [at the order review hearing].*
- A reflective piece addressing the concerns identified by the panel in this decision including the risks arising from [Mr Best's] limited understanding of the impact of domestic violence on vulnerable individuals and the impact of his behaviour on public confidence in the social work profession.*
- Objective evidence of remediation including evidence of his learning from attendance at any courses or participation in any programme's relating to domestic violence in particular any courses or programmes for the perpetrators of domestic violence.*

- *Testimonials from his current employers that focus on the concerns identified by the panel in this decision.*

No correspondence has been received from Mr Best since the Final Hearing concluded on 27 August 2021. It is submitted that he be given one further chance to engage and demonstrate he intends to remediate his practice before the Panel are invited at the next review to consider a Removal Order.

Should [Mr Best] engage with the process following receipt of the Notice of Hearing, it will be a matter for the Panel as to whether his fitness to practise remains impaired. If they consider that it is no longer impaired then they should allow the Order to lapse at the end of the term. Should they consider that his fitness to practise is still impaired then they will be invited to consider whether a further 4 month Suspension Order is required to allow [Mr Best] further time to demonstrate any outstanding remediation and developing insight.”

Panel decision and reasons on current impairment:

20. In considering the issue of current impairment, the panel undertook a comprehensive review of all the documentation contained within the hearing bundle which included:

- The decisions and reasons of the substantive hearing panel;
- Email correspondence from Social Work England to Mr Best, dated 28 September 2021, 1 December 2021, and 28 February 2022.

21. The panel took into account the advice it received from the Legal Adviser as to the proper approach it should adopt. In particular that:

- The purpose of the review is to consider the current impairment based on the substantive hearing panel’s findings of fact, the extent to which Mr Best has engaged with the regulatory process, the scope and level of his insight, and the risk of repetition.
- The persuasive burden is on Mr Best.
- In terms of whether Mr Best’s previous misconduct has been sufficiently, and appropriately remediated, relevant factors include whether he:
 - (i) fully appreciates the gravity of the previous panel’s finding of impairment;
 - (ii) has kept his skills and knowledge up to date;
 - (iii) is likely to place service users at risk if he were to return to unrestricted practise.

- The panel should take into account information relating to Mr Best's ability to practise safely and effectively and the wider public interest which includes promoting and maintaining proper professional standards of behaviour and promoting and maintaining public confidence in the profession.
 - It is only if the panel determine that Mr Best's fitness to practise remains impaired, that it should go on to consider what, if any, sanction to impose by applying the guidance as set out in the Sanctions Guidance (SG) and the principles of proportionality which require Mr Best's interests to be balanced against the interests of the public.
22. As a consequence of Mr Best's non-attendance, together with no written submissions on the issue of insight and remediation, there was no evidence before the panel that he had acquired an understanding of the seriousness of his misconduct or the impact of his conduct and behaviour on the safety and well-being of service users. The panel noted that Mr Best has not practised as a social worker for some time. In the absence of any positive evidence of insight and remediation, the panel was satisfied that there has been no material change in circumstances, since the substantive hearing concluded in August 2021. Therefore, there remains a risk of harm to service users and a risk of repetition.
23. The panel noted that a significant aspect of the public component is promoting and maintaining public confidence and promoting and maintaining proper professional standards for social workers. Members of the public would be extremely concerned if a social worker was permitted to resume unrestricted practise in circumstances where the misconduct which led to a finding of impaired fitness to practise had not been remediated. The panel concluded that, in these circumstances, a finding of no impairment would seriously undermine public trust and confidence in the profession and Social Work England as a professional regulator.
24. Therefore, the panel concluded that Mr Best's fitness to practise remains impaired.
25. Having determined that Mr Best's fitness to practise remains impaired the panel went on to consider what sanction, if any, to impose.

Decision and reasons on sanction:

26. The panel was mindful that the purpose of any sanction is not to punish Mr Best, but to protect the public and the wider public interest. The panel considered each available sanction in ascending order of severity.

No Action

27. The panel first considered taking no action. The panel concluded that, in view of the nature and seriousness of Mr Best's misconduct which has not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action on his

registration. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

28. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Best's ability to practise and is therefore not appropriate where, as in this case, there is a current risk to public safety. In any event, the concerns regarding Mr Best's practise had the potential to have adverse consequences for service users 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

29. The panel went on to consider a Conditions of Practice Order. The panel took the view that Mr Best's misconduct is potentially capable of being remedied and was satisfied that, in theory, appropriate, workable conditions could be formulated.

30. However, the current position is that Mr Best has not taken any of the remedial steps suggested by the substantive hearing panel. The panel took the view that Mr Best is either unwilling or unable to remediate his misconduct and, in these circumstances, the panel had no confidence that he would comply with a Conditions of Practice Order, even if suitable conditions could be formulated. The panel was aware that the suggestions made by the substantive hearing panel are only indicative and do not have any binding authority, unlike conditions which require compliance. However, suggestions and conditions both involve a willingness and an ability to demonstrate current fitness to practise, neither of which have been demonstrated by Mr Best.

31. Therefore, the panel concluded that a Conditions of Practice Order would not be appropriate or workable.

Suspension Order

32. The panel, having determined that a Conditions of Practice Order would not be appropriate went on to consider whether to extend the current Suspension Order for a further period of time. The panel noted that a Suspension Order would reaffirm to Mr Best, the profession, and the public the standards expected of a registered social worker. It would also prevent Mr Best from practising during the extended suspension period, which would therefore protect the public and the wider public interest. In addition, a Suspension Order would provide Mr Best with the opportunity to develop insight and take active steps towards a return to practice.

33. However, there is no evidence before the panel that, during the previous 12 months, Mr Best has taken advantage of the opportunity to demonstrate a commitment to a return to practice and there is no indication that he will do so in the future. In these circumstances, the panel concluded that extending the current suspension order would be an inappropriate use of the valuable resources of time and costs and there was no evidence before the panel that it would be in Mr Best's interests.

Removal Order

34. The panel determined that a Removal Order should be imposed on expiry of the current Suspension Order. In reaching this conclusion the panel took into account paragraph 98 of the SG which states:

"A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England."

35. The panel took the view that the above paragraph applies to the circumstances of this case. The panel determined that there was no information available to indicate that Mr Best was willing to address the damage caused to his personal reputation and his profession as a whole as a consequence of his misconduct. Nor was there any evidence before the panel that the risk of repetition and the risk to service users has been reduced. Mr Best has failed to take advantage of the opportunity to demonstrate that he is fit to return to the register unrestricted and there is no indication that giving him more time would make any difference. In these circumstances, the panel concluded that extending the current suspension order would serve no useful purpose. In reaching this conclusion, the panel took the view that there was no public interest in maintaining Mr Best's name on the Register and subjecting him to a further review, particularly as he appears to have completely dis-engaged from these proceedings.
36. Therefore, the panel concluded that no sanction lower than a Removal Order would be sufficient to protect the public and the wider public interest.

Right of Appeal:

37. Under paragraph 16 (1) (b) of schedule 2, part 5 of the Social Worker's Regulations 2018, the Social Worker may appeal to the High Court against:
- a. the decision of adjudicators:
 - i. to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
 - ii. not to revoke or vary such an order,

- iii. to make a final order.
 - b. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
38. Under regulation 16 (2) schedule 2, part 5 of the Social Worker's Regulations 2018 an appeal must be made within 28 days of the day on which the Social Worker is notified of the decision complained of.
39. Under regulation 9(4), part 3 (Registration of social workers) of the Social Worker's Regulations 2018, this order can only be recorded on the Register 28 days after Mr Best was informed of the decision or, if the Social Worker appeals within 28 days, when that appeal is exhausted.

Review of final orders

40. Under regulation 15 (2) and 15 (3) of schedule 2, part 4 of the Social Worker's Regulations 2018:
- 15 (2) – The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the Social Worker.
 - 15 (3) A request by the Social Worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.
41. Under rule 16 (aa) of Social Work England's fitness to practise rules, a registered social worker requesting a review of a final order under paragraph 15 of Schedule 2 must make the request within 28 days of the day on which they are notified of the order.