

Social Worker: Sybil Agnes
Ferguson
Registration Number: SW76902
Fitness to Practise
Final Order Review Meeting:

Meeting Venue: Remote meeting

Date of meeting: 06 October 2022

Final Order being reviewed: Suspension Order – (expiring 24 November 2022)

Hearing Outcome: Removal Order (to take effect upon expiry of the current
suspension order on 24 November 2022)

Introduction and attendees

1. This is the second review of a final suspension order originally imposed for a period of 12 months by panel of adjudicators on 28 April 2021. The first review took place on 13 April 2022 when a finding of current impairment was made and the suspension order was extended by six months, expiring on 24 November 2022.
2. Ms Ferguson did not attend today 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
Rachel Cook	Chair
Christine Moody	Social Work Adjudicator

Hearings Team/Legal Adviser	Role
Simone Ferris	Hearings Officer
Natarliya James	Hearings Support Officer
Judith Walker	Legal Adviser

Service of Notice:

4. The panel of adjudicators (hereafter the panel) had careful regard to the documents contained in the substantive order review hearing service bundle as follows:
 - A copy of the notice of this substantive order review hearing dated 5 September 2022 and addressed to Ms Ferguson at her address and email address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Ms Ferguson's registered email address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 5 September 2022 the writer sent by email to Ms Ferguson at her registered email address: Notice of Hearing and related documents;
5. The panel accepted the advice of the legal adviser in relation to service of notice.

6. Having had regard to Rule 44 of the Fitness to Practise Rules 2019 (the Rules) and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Ms Ferguson in accordance with the Rules.

Proceeding in the absence of Ms Ferguson and as a meeting:

7. The panel accepted the advice of the legal adviser in relation to the factors it should take into account when considering whether to proceed in the absence of Ms Ferguson. This included reference to Rule 43 of the Rules and the cases of *R v Jones [2003] UKPC*; *General Medical Council v Adeogba [2016] EWCA Civ 162 etc.*
8. The panel considered all of the information before it, noting that Ms Ferguson had not responded to the notice of hearing which had been served in accordance with the rules and she had not applied for an adjournment. Ms Ferguson had not responded to the notice of hearing. Ms Ferguson had not attended the substantive hearing (22 – 24 February 2021 and 27 – 28 April 2021) nor the first review (13 April 2022). The panel concluded that Ms Ferguson had chosen voluntarily to absent herself from these proceedings. As such the panel considered that there was no reason to believe that adjourning today's proceedings would secure her attendance. It considered that there were public protection concerns arising from the allegations and noted that the suspension order on Ms Ferguson's registration will expire on 24 November 2022. The panel weighed the interests of Ms Ferguson in regard to her attendance at today's review with those of Social Work England and the public interest in an expeditious disposal of this review and decided that it was in the interests of justice for this review to proceed in Ms Ferguson's absence.
9. The panel noted that the notice of final order review hearing informed Ms Ferguson that 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 20 September 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, under Rule 16 of the Fitness to Practise Rules, decide to deal with the review as a meeting. If the review is dealt with by way of 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."

10. The panel received no information to suggest that Ms Ferguson had responded.
11. 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."

12. In the absence of any information to suggest that Ms Ferguson had responded to the notice of today's final order review 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:

13. 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 24 November 2022.

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

Between the dates of 28 November 2015 and 1 December 2016, whilst employed at Brighton and Hove City Council, you:

1. Did not complete supervision records and/or management documents to an acceptable standard in that:

- a. You did not ensure that all of the cases that you were supervising had supervision records*
- b. You did not ensure that all of your cases were supervised within the required timescales*
- c. You did not ensure that all of your supervision records were complete*
- d. You did not keep adequate supervision records for the case of P192886*
- e. In respect of case JP (P124909) you did not review a s.47 Management Decision Document.*

2. NOT PROVED

3. Between 21 March 2016 and 20 May 2016 did not ensure that appropriate action was taken to safeguard children DB and DJ in that:

- a. Between 21 March 2016 and 5 May 2016 there was no social worker intervention for child DB and/or DJ*
- b. On the 20 May 2016 you recorded a management decision to close the cases of DB and/or DJ without any social work intervention taking place.*

4. Between February 2016 and November 2016 did not ensure that appropriate action was taken to safeguard child CK (P159974) in that;

- a. No Pathway Plan Needs assessment was completed
- b. You allowed an administrative assistant TT to act as a point of liaison between the Council and CK (P159974)
- c. On the 2 November 2016 you did not respond to a concern that CK (P159974) was in possession of a knife.

5. Did not ensure that appropriate action was taken to safeguard sibling group A in that:

- a. You did not challenge the account given by Sibling Group A's parents about their injuries
- b. You closed the case without referring it to a child protection conference.

6. Between 26 January 2016 and July 2016 did not ensure that appropriate action was taken to safeguard sibling group S in that:

- a. You did not take any action on the case between 26 January 2016 and March 2016
- b. You did not hold a strategy meeting
- c. You did not undertake a s.47 management decision
- d. You left sibling group S at risk of harm.

7. Did not ensure appropriate actions were taken to safeguard child FW in that you;

- a. Did not hold an initial child protection conference until 28 October 2016
- b NOT PROVED

The previous final order review panel on 13 April 2022 determined the following with regard to impairment:

- 14. 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 panel. However, it has exercised its own judgement in relation to the question of current impairment.
- 15. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and the written submissions made by Social Work England.

16. *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.*
17. *The panel first considered whether Ms Ferguson's fitness to practise remains impaired.*
18. *The panel bore in mind that there had been no engagement from Ms Ferguson with Social Work England since the substantive hearing in February and April 2021. The panel considered that as a result of the complete lack of engagement by Ms Ferguson, it was no further forward than the substantive panel had been. It bore in mind that it had no information or evidence from which to assess whether Ms Ferguson was addressing the misconduct issues and there was no information from her regarding her current circumstances.*
19. *The panel was of the view that the issues were serious as they related to a wide range of failures relating to safeguarding of vulnerable service users. It considered that the failures related to core aspects of social work and had the potential to expose vulnerable service users to a significant degree of harm. Therefore, it was important that they be addressed and evidenced, in order for Ms Ferguson to demonstrate that she would be capable of safe and effective practice.*
20. *The panel noted that the substantive hearing panel had set out some suggestions for Ms Ferguson as to what may assist a reviewing panel. There had been no response from Ms Ferguson and no information had been provided. As a result, the panel had no information to indicate that Ms Ferguson's insight had developed or that she had taken any steps towards remediation. Therefore, the panel had no evidence to indicate that the position had changed, or that the risks identified by the original panel had diminished.*
21. *The panel concluded that the risk of repetition remained, and there was a consequent risk of harm to the public if Ms Ferguson were permitted to practise unrestricted. Accordingly, the panel considered that Ms Ferguson's fitness to practise remained impaired on the personal element.*
22. *The panel also considered that without evidence that Ms Ferguson's insight had developed, or evidence of any remediation, the public would be concerned if no finding of current impairment were made in her case. Therefore, the panel concluded that Ms Ferguson's fitness to practise also remains impaired on the public element of the wider public interest in order to maintain public confidence in the profession and to uphold professional standards.*
23. *Accordingly, the panel concluded that Ms Ferguson's fitness to practise remains impaired on the grounds of both public protection and the wider public interest.*

The previous final order review panel on 13 April 2022 determined the following with regard to sanction:

24. *Having found Ms Ferguson'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*

written submissions made along with all the information and accepted the advice of the legal adviser. The panel also took into account the Sanctions Guidance published by Social Work England.

25. The panel was mindful that the purpose of any sanction is not to punish a social worker, 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 Ms Ferguson's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action, advice, or warning

26. The panel concluded that in the absence of evidence of insight and remediation, it would be inappropriate to simply allow the suspension order to lapse on its expiry or to issue advice or a warning. In the panel's view, none of these options would restrict Ms Ferguson's practice and so would not be sufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Conditions of Practice Order

27. The panel went on to consider a conditions of practice order. The panel considered that conditions of practice would not be workable where Ms Ferguson has given no indication that she accepted any responsibility for the misconduct on her part, beyond a bare expression of remorse. The lack of insight on her part led the panel to believe that Ms Ferguson would not be willing or able to respond positively to conditions of practice at this time.
28. In the light of Ms Ferguson's ongoing lack of engagement, the panel had nothing before it to demonstrate a willingness on her part to comply. It was therefore not satisfied that conditions would be practical or workable. Consequently, the panel did not consider that a conditions of practice order was either appropriate or sufficient in this case to protect the public.

Suspension Order

29. Having determined that a conditions of practice order was not sufficient to protect the public, the panel concluded that the appropriate sanction is a suspension order. Such an order would prevent Ms Ferguson from practising during the suspension period, and so protect the public for the period for which it is in force. The panel had found that Ms Ferguson's misconduct was remediable, but she had yet to remedy it. She had still to develop sufficient insight into the misconduct. In addition, it would maintain public confidence in the profession.
30. Therefore, the panel was satisfied that a suspension order would protect the public and the wider public interest.

31. *The panel noted that Social Work England had submitted that the suspension order should be extended by 6 months, and that all sanctions would be available to the next reviewing panel.*
32. *The panel was of the view that this was sufficient time for Ms Ferguson to re-engage with Social Work England and to start taking steps towards further insight and remediation, should she choose to do so.*
33. *The panel noted that Ms Ferguson had been a social worker for over 30 years without any regulatory history and that part of her grievance with the Council had been upheld.*
34. *The panel was of the view therefore that if Ms Ferguson wishes to continue her career as a social worker, then she should re-engage with Social Work England and that at any future review hearing a panel may be assisted by the following: –*
 - a. *Ms Ferguson's attendance and engagement with the review process.*
 - b. *A reflective piece of writing demonstrating insight into the impact of her actions on the young people she was responsible for and identifying steps she has taken to remedy her failings.*
 - c. *References and testimonials from any employers (paid and unpaid) of Ms Ferguson or other relevant persons.*
 - d. *Evidence of Ms Ferguson keeping her knowledge and skills up to date.*

Social Work England submissions:

35. The panel noted the written submissions from Social Work England set out in the notice of hearing dated 5 September 2022 which are as follows:

"Subject to any further engagement by the Social Worker with the review process and receipt of evidence of insight and remediation, Social Work England invite the Panel to find that the Social Worker's fitness to practise remains impaired and to impose a Removal Order. At the last Review the Social Worker was advised that if she did not engage within the 6 month extension period, Social Work England would apply for a Removal Order at the next review.

The previous Panel concluded that the Social Worker lacked insight, and no further evidence of remediation or reflection has been provided. The Social Worker has not engaged with the proposed recommendations given at the last hearing and has not provided any evidence that her fitness to practise is no longer impaired. The issues with the Social Worker's practice identified by the two previous Panels therefore remain.

Accordingly, Social Work England submit that the Suspension Order should be replaced with a Removal Order. Should the Social Worker re-engage with the fitness to practise proceedings and provide evidence that she has sought to address the

matters identified by the previous Panel, then it will be a matter for the Panel as to whether the Social Worker is currently impaired or not. Should the Panel consider the Social Worker's fitness to practise to be impaired they will be invited to consider a further 6 month extension of the Suspension order or imposing Conditions of Practice. This would afford the Social Worker a final opportunity to demonstrate her commitment to returning to social work practise and provide evidence of insight and remediation."

Social Worker submissions:

36. Ms Ferguson did not provide any written submissions for the panel to consider.

Panel decision and reasons on current impairment:

37. In considering the question of current impairment, the panel undertook a comprehensive review of the final order in light of the current circumstances. It considered the question of impairment afresh and although it took into account the decisions of the previous panels it was aware that the question of current impairment is a matter for its own independent judgement based on the information available today. Accordingly the panel had regard to the previous decisions, placing appropriate weight upon them, but ensuring it exercised its own judgement.
38. The panel had regard to all of the documentation before it, including the written submissions made by Social Work England. However, although the panel considered these submissions, it recognised that they were only submissions for their consideration.
39. 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 maintaining public confidence in the profession.
40. The panel first considered whether Ms Ferguson's fitness to practise remains impaired.
41. The panel noted that the original panel found that Ms Ferguson's misconduct concerned fundamental failings in social work practice at a basic level but had borne in mind Ms Ferguson's extensive experience and concluded that the misconduct was remediable and concerned failures to carry out the relevant procedures regarding her management oversight rather than attitudinal issues.
42. The panel also noted the following parts of the original panel's determination which provided helpful information regarding its conclusions about Ms Ferguson's insight and failure to remediate her past misconduct.
43. The following extracts, in italics, are taken from the original panel's determination.

“In Ms Ferguson’s submissions for the disciplinary hearing, she stated:

“Unfortunately, as in all the cases identified I do not have access to BHCC system and after 17 months I cannot fully comment on these cases, I do regret where cases did not meet the required standard and whilst senior management will not accept that I have been impacted on in my role due to the effect of racism and their denial that it exists in BHCC has impacted gravely on my ability to perform my role. The service pressures, staffing pressures, the difficulties I was having with staff, issues with my manager, undermining by workers and my manager are also key issues as why I could not complete my role as required.”

The panel took this to mean that Ms Ferguson did acknowledge a failure to reach a required standard in some cases and offered her regrets. However, it also indicated that, in her view, the key issues lay outside her own control.

Ms Ferguson went on to state elsewhere, in her email correspondence (12 February 2020) with Social Work England:

“I have to reiterate that at the time I did all that I could to bring the issues to my managers attention, everyone has to accept their role in any given situation and I should have escalated my concerns above my manager’s level.....During the time at BHCC I did what I could to support my team, this meant having to take on social work tasks including during my leave, working until late and at weekends, taking on social work tasks on a daily basis to ease their work load and fill the gap of poor staffing, I realise that this was to my detriment but I was trying to provide continuity of service. I do not agree that my practice should be seen as incompetent or misconduct given that my previous 30 years of practice is unblemished and the mitigating circumstances that led to this investigation.”

Again, the panel determined that Ms Ferguson was not engaging with the question as to how her practice could have been improved in relation to the misconduct, but suggesting that, since she had substantial previous experience, the fault could not lay with her. The panel did not find evidence of sufficient remediation undertaken by Ms Ferguson.

The panel noted also noted from Ms Ferguson’s email dated 09 November 2020 in the original Service Bundle, her comments:

“I have nothing further to add to the information I sent to HCPC and SW England. Except that I would like to make one comment about the writers comment on their report, that I don’t have insight into the issues raised. Nothing is further from the truth, I don’t believe I would have had a career in the social work field for over 30 years if I had no insight into risk. It is clear that the writer paid little attention to the environment and context in which I worked leading me to make that comment. “

The panel took from this that Ms Ferguson rejected that the failings found had anything to do with her own lack of insight, which was demonstrated by her experience, but could be explained by the external factors.

The panel did not have before it any evidence that Ms Ferguson has carried out any reflection, training or development in relation to the misconduct found. Ms Ferguson has not appeared before it, and the panel had not counted this against her, but neither had Ms Ferguson taken the opportunity to advance any development of insight before the panel.

In view of Ms Ferguson's own position that the failings are entirely explicable by external factors, together with the lack of evidence of any remediation conducted by her, the panel determined that Ms Ferguson has not remediated her past misconduct.

Having found misconduct which has not been remediated, the panel was not able to state that the misconduct is highly unlikely to be repeated by Ms Ferguson. Her lack of insight indicates that a risk of repetition remains and therefore there continues to be a risk of harm to vulnerable service users.

The panel noted that it had found several of the HCPC standards to have been breached in this case, and that those failings related to fundamental areas of social work practice. Considering this and the risk of harm identified, the panel also determined that public confidence in the profession would be undermined if a finding of impairment was not made."

44. In considering whether Ms Ferguson's fitness to practise is currently impaired the panel today bore in mind the serious nature of Ms Ferguson's misconduct which occurred over a significant period of time and had the potential to put vulnerable service users at risk. The panel considered that it had no information before it to show that Ms Ferguson's insight had developed since the previous review or that she had taken steps to ensure that there is no repetition of her misconduct. The panel noted that Ms Ferguson has not engaged with Social Work England since the substantive hearing in February and April 2021. In light of this complete lack of engagement by Ms Ferguson, the panel had no information or evidence from Ms Ferguson to indicate whether she was addressing her past misconduct or whether she intended to do so in the future.
45. The panel was of the view that Ms Ferguson's misconduct related to core aspects of social work and had the potential to put vulnerable service users at risk of harm. It agreed with the previous review panel that such issues had to be addressed and evidenced in order for Ms Ferguson to demonstrate that she would be capable of safe and effective practice.
46. The panel noted that the original hearing panel and the previous review panel had set out some suggestions for Ms Ferguson as to what may assist a reviewing panel. There had been no response from Ms Ferguson to the suggestions of the original panel or to those made by the previous review panel. As a result, the panel today had no information to indicate that Ms Ferguson's insight had developed or that she had taken any steps towards remediation. Therefore, the panel had no evidence to indicate that the position had changed, or that the risks identified by the original panel had diminished.

47. The panel concluded that the risk of repetition remained, and there was a consequent risk of harm to the public if Ms Ferguson was permitted to practise unrestricted. Accordingly, the panel concluded that, given the continued risk to the public, Ms Ferguson's fitness to practise remained impaired
48. The panel also considered that without evidence that Ms Ferguson's insight had developed, or evidence of any remediation, the public would be shocked and concerned if no finding of current impairment was made in her case. Therefore, the panel concluded that Ms Ferguson's fitness to practise also remains impaired on the ground of the wider public interest and the need to maintain public confidence in the profession and to uphold professional standards.
49. Accordingly, the panel concluded that Ms Ferguson's fitness to practise remains impaired on the grounds of both public protection and the wider public interest.

Decision and reasons on sanction:

50. Having found Ms Ferguson'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 before it and accepted the advice of the legal adviser. It also had regard to the Sanctions Guidance published by Social Work England.
51. The panel was mindful that the purpose of any sanction is not to punish a social worker but to protect the public and the wider public interest. The public interest includes maintaining public confidence in the profession and upholding proper standards of conduct and behaviour for social workers. The panel applied the principle of proportionality by weighing Ms Ferguson'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 Ms Ferguson's impairment which has not been remedied, 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

53. The panel next considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Ms Ferguson's ability to practise and is therefore not appropriate given the risk to public safety which has been identified. In addition, given this risk, such action may seriously undermine public confidence in the profession. Therefore the panel concluded that issuing advice or a warning would be inappropriate and insufficient to protect the public and the wider public interest.

Conditions of Practice Order

54. The panel went on to consider a conditions of practice order. The panel took the view that Ms Ferguson's misconduct remains potentially capable of being remedied but this is dependent on her willingness to engage with remediation and comply with conditions. Ms Ferguson has provided no information to suggest that she would do so and has failed to respond to the suggestions made by the original hearing panel and the previous review panel regarding information she may wish to provide to a future panel. In these circumstances the panel concluded that a conditions of practice order is not workable or appropriate given Ms Ferguson's continued lack of engagement.

Suspension Order

55. Having determined that a conditions of practice order would not be appropriate, the panel considered a further period of suspension. The panel bore in mind the need to protect the public and the wider public interest. The panel was mindful of the risk that prolonged suspension may result in deskilling but also noted that it is in the public interest to support the return to practise of a trained and skilled social worker if this can be achieved safely. It noted that it may be appropriate to impose a longer period of suspension where there is no reasonable prospect of the social worker regaining fitness to practise in the short term. However, in this case the panel had no information to suggest that Ms Ferguson's failure to engage will change in the future. She has not engaged since the original hearing despite the suggestions of the previous panels as to how she may do so. The panel acknowledged that a further period of suspension would protect public safety. However, it also bore in mind that public confidence in the profession and the regulator may be undermined by the continued suspension of a social worker who has totally disengaged from their regulator over a significant period of time. Given these factors the panel concluded that a further period of suspension would be inappropriate and insufficient to protect the wider public interest.

Removal Order

56. 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. Having considered all the lesser sanctions and concluded that they would be inappropriate and insufficient in the circumstances of this case the panel took the view that a removal order would be the only outcome that would be sufficient to protect the public interest.
57. Accordingly the panel determined that a removal order be made in respect of Ms Ferguson's registration.

Right of Appeal:

58. 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.

59. 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.

60. 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.

61. 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

62. 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.

63. 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.