



Social Worker: Stewart McCafferty

Registration Number: SW31014

Fitness to Practise

Final Order Review Meeting:

Meeting Venue: Remote hearing

Date of meeting: Thursday 6 October 2022

Final Order being reviewed: Suspension Order – (expiring 25 November 2022)

Hearing Outcome: Removal Order (to take effect upon expiry of current suspension order on 25 November 2022)

Introduction and attendees

1. This is the second review of a final suspension order originally imposed for a period of 9 months by a panel of adjudicators (the panel) on 30 July 2021. At the first review of the final suspension order on 14 April 2022 the panel imposed a suspension order of 6 months, which is due to expire on 25 November 2022.
2. Mr McCafferty did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP, who did not attend and their written submissions are set out within the notice of hearing letter.

Adjudicators	Role
Jane Everitt	Chair
Stella Elliott	Social Work Adjudicator

Hearings Team/Legal Adviser	Role
Paige Swallow	Hearings Officer
Camilla Read	Hearings Support Officer
Scott McDonnell	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 substantive order review hearing dated 6 September 2022 and addressed to Mr McCafferty at his email address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr McCafferty's registered email address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 6 September 2022 the writer sent by electronic mail to Mr McCafferty at the email address referred to above: 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 the Social Work England (Fitness to Practise) Rules 2019 (as amended) ("the Rules") and all 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 Mr McCafferty in accordance with Rules 14, 15, 44 and 45.

Proceeding with the final order review as a meeting:

7. The notice of final order review hearing informed the social worker that following the developments concerning the Coronavirus, Social Work England is no longer scheduling hearings to take place at its offices at 1 North Bank, Blonk Street, Sheffield, S3 8BY. All review hearings are therefore currently being held by way of an electronic hearing (by phone or video link if possible). The notice stated:

"If you wish to attend the electronic hearing, please confirm your intention by no later than 4pm on 21 September 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 received no information to suggest that Mr McCafferty had responded to the notice of final order review hearing nor had he asked for an adjournment. The panel determined that Mr McCafferty had voluntarily absented himself.
9. The panel heard and accepted the advice of the legal adviser in relation to the factors it should take into account when considering this issue and proceeding in the absence of Mr McCafferty. This included reference to Rule 43 of the Rules, the cases of *R v Jones* [2003] UKPC; *General Medical Council v Adeogba* [2016] EWCA Civ 162.
10. The panel decided that it was in the public interest as well as being fair and appropriate to proceed in Mr McCafferty's absence and to conduct a mandatory review of the interim order.
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. 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.
14. The current order is due to expire at the end of 25 November 2022.

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

Whilst registered as a Social Worker:

1. You did not maintain an appropriate professional boundary with Service User A in that:
 - a) From November 2014, you continued to seek contact with and/or have contact with Service User A, despite:
 - i. your professional involvement with Service User A having ceased;
 - ii. being advised by the Kent and Medway Adolescent Unit between November and December 2014 that it was not appropriate for you to visit Service User A, given that your professional role had ceased;
 - iii. being advised by Luton Borough Council in October 2015 that you were no longer permitted to have contact with Service User A.
 - b) Between July and October 2015, you:
 - i. bought a coat and boots for Service User A as a gift,
 - ii. bought a chest binder and Stand to Pee (STP) Device for Service User 1 A as a gift.
 - c) In or around November 2015, you sent a letter to Service User A for their 18th birthday.
 - d) You shared your home with Service User A from around May 2016 to 15 February 2018 and/or to present day.
1. The matters described at paragraph 1 constitute misconduct.
2. By reason of your misconduct your fitness to practise as a Social Worker is impaired

The previous final order review panel on 14 April 2022 determined the following with regard to impairment:

15. *"The panel noted that the original panel found that Mr McCafferty had limited insight and the ongoing lodging arrangement meant that there was a possibility of repetition if Mr McCafferty were faced with a similar situation. The original panel also considered that Mr McCafferty was acting in breach of a fundamental tenet of the social work profession namely the requirement to maintain professional boundaries.*
16. *The panel decided that Mr McCafferty had shown little remorse regarding his actions as he had decided to breach professional boundaries in order to save a vulnerable service user from the risk of causing serious harm to the public or to themselves. Mr McCafferty could not accept that this constituted misconduct, albeit that during this review hearing he accepted that it was safer to adopt an uncompromising position in relation to professional boundaries.*
17. *The panel viewed the 22-page written submission, that was prepared shortly before the review hearing, as demonstrating limited insight but were of the view that Mr McCafferty's oral evidence, in response to questions, showed a better understanding of the need to remain professional rather than allow a strong personal conviction to lead him to breach professional boundaries. In particular, the panel noted within Mr McCafferty's written submission that he states, 'there is no risk to the reputation of social work as the motives are humanitarian and the outcomes so far very positive'. The panel was of the view that Mr McCafferty's insight developed through the review hearing. The panel considered Mr McCafferty's oral evidence as demonstrative of his capacity, in the future, to ensure his personal values did not lead him to breach professional boundaries.*
18. *The panel considered however that Mr McCafferty's insight was not yet sufficient because his insight developed during the hearing and therefore only occurred after he had prepared his 22-page written submissions.*
19. *Additionally, the panel viewed Mr McCafferty's insight as being incomplete as regards the implications of his breach of professional boundaries for A. The panel noted that Mr McCafferty at no stage during the hearing, or in his written submissions, considered the consequence for A if Mr McCafferty for whatever reason was unable to continue to assist A in the future and the potentially significant adverse impact that could have on A.*
20. *The panel noted that Mr McCafferty would seek to find alternative accommodation or advocate for third party involvement to assist a service user in a similar situation in the future. The panel was not persuaded that Mr McCafferty fully appreciated the impact of the various and repeated breaches of professional boundaries upon A, which included: contacting a service user after professional involvement had ceased and contrary to professional advice; buying personal items and sending an inappropriate birthday letter. Mr McCafferty's focus was upon: his rationale for sharing his home with A; that a social worker had in the past given permission for him to contact A and that this permission would now not be given under Social Work England rules.*

21. *Taking into account all of the above, the panel concluded that the risk of repetition had not been reduced to a level where Mr McCafferty's current fitness to practise was no longer impaired.*
22. *The panel considered that Mr McCafferty had made some progress with regard to his insight, but this remains incomplete and that there was further work required by Mr McCafferty.*
23. *For these reasons, the panel decided that Mr McCafferty's fitness to practise is currently impaired."*

The the previous final order review panel on 14 April 2022 determined the following with regard to sanction:

24. *"Having determined that a conditions of practice order would not be appropriate, the panel concluded that the appropriate sanction is a suspension order. A suspension order would prevent Mr McCafferty from practising during the suspension period, which would therefore protect the public and the wider public interest.*
25. *The panel determined that the suspension order should be imposed for a period of 6 months. The panel was satisfied that this period was appropriate to show further insight and remediation into the nature and impact of the professional misconduct. 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 McCafferty may need to reflect on the panel's findings and devise a plan of action targeted towards a return to the register unrestricted.*
26. *This panel cannot bind a future panel. However, a future reviewing panel would expect Mr McCafferty 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 further significant steps that would facilitate a safe and effective return to the register without restriction. This may include, amongst other things but not limited to:*
 - a)Mr McCafferty's continuing co-operation with Social Work England and engagement in the process;*
 - b)a reflective statement on issues of professional boundaries, including reference to the potential impact of his own breach of professional boundaries on A, colleagues, the authorities professionally responsible for the care of A, and the reputation of the profession."*

Social Work England submissions:

27. The panel referred to the written submissions dated 6 September 2022 from Social Work England as to the background and the previous panel's findings in relation to impairment and sanction. Social Work England submitted that subject to any further engagement by Mr

McCafferty with the review process and receipt of evidence of insight and remediation, Social Work England invite the Panel to find that Mr McCafferty's fitness to practise remains impaired and to impose a Removal Order.

28. Social Work England submitted that the previous Panel recognised that Mr McCafferty lacked sufficient insight, and to date no further evidence of remediation or reflection has been provided. Mr McCafferty has not provided any evidence in support of his engagement with the proposed recommendations given at the last hearing and therefore has not provided any assurance to the Panel that his fitness to practise is no longer impaired.
29. At the time of the last hearing the breach of professional boundaries was ongoing and no evidence has been provided since then that suggests that Mr McCafferty has ceased to live with the Service User.
30. If following the Notice of Hearing dated 6 September 2022 Mr McCafferty provided evidence of developing remediation and insight, but the breach of professional boundaries is still ongoing, as the Service User is still living with Mr McCafferty, then Social Work England invites the Panel to conclude that their fitness to practise remains impaired. Social Work England submit therefore on the basis of the information to date, that a Removal Order is appropriate.
31. However, should Mr McCafferty provide, evidence of compliance with all of the previous Panel's recommendations, including evidence that the Service User is no longer living with him, then it is a matter for the Panel to decide whether Mr McCafferty's fitness to practise remains impaired

Social Worker submissions:

32. Mr McCafferty provided no submissions and has not provided any evidence of developing remediation or insight since the last review hearing on 14 April 2022. Nor has he provided any evidence that the Service User is no longer living with him.

Panel decision and reasons on current impairment:

33. 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.
34. The panel had regard to all of the documentation before it, including the decision and reasoning of the original and previous review panel. The panel also took account of the written submissions by Social Work England and Mr McCafferty's earlier submissions provided for the previous hearings.
35. The panel heard and accepted the advice of the legal adviser. The panel was reminded that a social worker's fitness to practise is impaired if they pose a risk to public safety, or if their conduct or performance undermines the confidence the public is entitled to place in all

social workers in England. A social worker's fitness to practise may also be impaired if their actions make it necessary to send a public message about the standards expected of social workers.

36. If the panel decided that Mr McCafferty's practice is currently impaired then it should then consider what sanctions are available and refer to Social Work England's "Sanctions Guidance". The panel must start from the least restrictive sanction. Insight and remediation are important factors.
37. The panel first considered whether Mr McCafferty's fitness to practise remains impaired.
38. The panel noted that the previous reviewing panel found that Mr McCafferty had limited insight and had demonstrated insufficient remediation with regard to his misconduct arising from his interaction and sharing with his home with the Service User.
39. This panel noted that no information had been provided by Mr McCafferty since the last review hearing on 14 April 2022 and as such it appeared that he had failed to act upon the recommendations of the previous of panel as to what might assist a future reviewing panel. The panel had no evidence otherwise.
40. Mr McCafferty has not engaged with Social Work England since the last hearing and the panel has no additional evidence of insight or remediation. The panel concluded Mr McCafferty continues to show insufficient insight and there is no evidence of development, remediation or positive steps taken.
41. The panel determined that in light of all of the circumstances described there remains a risk of repetition if Mr McCafferty was permitted to practise without restriction noting that Mr McCafferty failed to maintain professional boundaries. There has been no material change since the last review hearing and there is no information before the panel to indicate that Mr McCafferty has demonstrated further insight or remediation. The panel decided that Mr McCafferty's practise is currently impaired.
42. The panel also considered that a reasonable and well informed member of the public would be extremely concerned if Mr McCafferty was permitted to practise without restriction given the continuing breach of professional boundaries and lack of remediation.
43. For those reasons the panel concluded that an order is necessary on the grounds of public protection, including all three limbs of public protection, namely protecting the public from harm, maintaining public confidence, and declaring and upholding professional standards.

Decision and reasons on sanction:

44. Having found Mr McCafferty'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 along with all the information provided and accepted the advice of the legal adviser.

45. The panel considered the written submissions made by Social Work England, which invited the panel to consider a removal order if Mr McCafferty did not provide further information on insight and remediation, (which is the case).
46. The panel also took into account the Sanctions Guidance published by Social Work England.
47. The panel was mindful that the purpose of any sanction is not to punish Mr McCafferty, 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 McCafferty's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action, Advice or Warning

48. The panel took account of the Sanctions Guidance and considered the serious findings of fact by the final order panel, as well as the lack of insight, remediation and likelihood of repetition. The panel decided that taking no further action, providing advice or issuing a warning, would not be appropriate in this case as these sanctions would not restrict Mr McCafferty's practice and would therefore not protect the public from the risks that have been identified. The panel decided that these sanctions are not appropriate where there is a continuing risk to the public of Mr McCafferty behaving in the same way again.

Conditions of Practice Order

49. The panel went on to consider a conditions of practice order. The panel took the view that there are no practical or workable conditions that could be applied noting that Mr McCafferty had failed to maintain boundaries with a Service User and this had taken place outside of the workplace. Mr McCafferty had failed to demonstrate sufficient insight and his attitudinal behaviour indicates that he is unlikely to be capable of complying with a conditions of practice order also noting that he is not currently employed as a social worker.

Suspension Order

50. Having determined that a conditions of practice order would not be appropriate, the panel then considered whether a suspension order would be the most appropriate sanction.
51. The panel noted that Mr McCafferty had been suspended from practising for the last 12 months. This had provided him with an opportunity to address the concerns identified by the previous review panel including its recommendations that for this hearing he provided:

"evidence that he has undertaken further significant steps that would facilitate a safe and effective return to the register without restriction. This may include, amongst other things but not limited to:

a) Mr McCafferty's continuing co-operation with Social Work England and engagement in the process;

b) a reflective statement on issues of professional boundaries, including reference to the potential impact of his own breach of professional boundaries on A, colleagues, the authorities professionally responsible for the care of A, and the reputation of the profession.”

52. The panel noted that Mr McCafferty had not provided any such information, nor had he engaged with proceedings since 14 April 2022.
53. As such Mr McCafferty has failed to demonstrate any subsequent or further developing insight or remediation. Mr McCafferty had failed to take the initiative to address all of the concerns of the last review hearing panel and this was of particular concern for the panel.
54. Although the previous review panel had imposed a suspension order this panel took into account the new circumstances since 14 April 2022, in particular Mr McCafferty’s lack of engagement, insight and remediation. The panel decided that a further suspension order would not be sufficient to resolve Mr McCafferty’s currently impaired practise and to protect the public and the wider public interest, including maintaining public confidence in the profession.

Removal Order

55. 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 necessary in all the circumstances of this case.
56. Mr McCafferty had failed to demonstrate any further insight or remedation to address his impaired practise.
57. The panel concluded that his current impairment and continuing risk to service users required that he should be removed from the register to protect the public from harm. The panel acknowledged that a suspension order would preclude Mr McCafferty from practising. However, the panel took into account that Mr McCafferty had been given an opportunity to evidence his insight and remediation in relation to the original panel findings, but had not done so. The panel was therefore satisfied that any lesser sanction than a removal order would undermine public trust and confidence in the profession and would be wholly insufficient to maintain professional standards.
58. In reaching this conclusion the panel balanced the public interest against Mr McCafferty’s interests. The panel took into account the consequential personal and professional impact a removal order may have upon Mr McCafferty, but concluded that these considerations are significantly outweighed by the panel’s duty to give priority to public protection and the wider public interest

Right of Appeal:

59. 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.
60. 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.
61. 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.
62. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practise Rules 2019.