

Social Worker: Olumide Fashole

Registration Number: SW292257

Fitness to Practise

Final Order Review Hearing:

Hearing Venue: Remote hearing

Date of hearing: 4 October 2022

Final Order being reviewed:
Suspension Order – (expiring 17 November 2022)

Hearing Outcome:

Removal Order (to take effect upon expiry of current final suspension order on 17 November 2022)

Introduction and attendees

1. This is the first review of a final suspension order originally imposed for a period of 12 months by a panel of adjudicators on 21 October 2021.
2. Mr Fashole did not attend and was not represented.
3. Social Work England was represented by Mr East, presenting officer instructed by Capsticks LLP.

Adjudicators	Role
Rachel Cook	Chair
Pervez Akhtar	Social Work Adjudicator

Hearings Team/Legal Adviser	Role
Natasha Quainoo	Hearings Officer
Jo Cooper	Hearings Support Officer
Scott McDonnell	Legal Adviser

Service of Notice:

4. Mr Fashole did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Mr East that notice of this hearing was sent to Mr Fashole by electronic mail to his email address on the Social Work Register (the Register). Mr East submitted that the notice of this hearing had been duly served.
5. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of the hearing dated 2 September 2022 and addressed to Mr Fashole at his email address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr Fashole’s registered email address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 2 September 2022 the writer sent by email to Mr Fashole at the email address referred to above; Notice of Hearing and related documents.

6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. 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 Fashole in accordance with Rules 14, 15, 44 and 45.

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Mr East on behalf of Social Work England. Mr East submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Mr Fashole and as such there was no guarantee that adjourning today’s proceedings would secure his attendance. Mr East further submitted that there were public protection concerns arising from the findings by the panel who made the final order on 21 October 2021. He therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
9. The panel noted that Mr Fashole had been sent notice of today’s hearing and referred to an email from Mr Fashole dated 3 October 2022 to Social Work England stating that he would not be able to attend today’s hearing due to “ongoing family matters” that required his attention.
10. The panel 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 cases of R v Jones [2003] UKPC; General Medical Council v Adeogba [2016] EWCA Civ 162 etc; and Rule 43 of the Rules. The panel was also referred to the case of Sanusi v The General Medical Council (2019) EWCA Civ 1172 when considering whether to proceed.
11. The panel considered all of the information before it, together with the submissions made by Mr East on behalf of Social Work England. The panel was satisfied taking into account the email from Mr Fashole dated 3 October 2022 that Mr Fashole was aware of today’s hearing.
12. The panel noted that Mr Fashole provided very limited information as to his reason for today’s non-attendance; referring only to “ongoing family matters” without providing any additional information or evidence.
13. The panel had no reason to believe that an adjournment would result in Mr Fashole’s attendance and the panel noted that there was no request for an adjournment within his email of 3 October 2022. The panel therefore, concluded that Mr Fashole had chosen voluntarily to absent himself. In addition the Hearing Support Officer informed the panel that prior to the commencement of the hearing they had telephoned Mr Fashole and sent

him an email. No response had been received. The panel was mindful that the current suspension order expires on 17 November 2022.

14. Having weighed the interests of Mr Fashole 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 Fashole's absence.

Review of the current order:

15. 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.
16. The current order is due to expire at the end of 17 November 2022.

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

1. In or around May 2019 you failed to maintain proper professional boundaries with Person 1, in that you:

- a) Continued to engage with her in text message communication;
- b) Visited her home address;
- c) Engaged in a sexual act with her;

2. Your conduct as set out in paragraph 1 c) was sexually motivated.

The matters set out in paragraphs 1 and 2 constitute misconduct.

By reason of your misconduct your fitness to practise is impaired.

The final hearing panel on 21 October 2022 determined the following with regard to impairment:

17. The panel considered whether the misconduct is remediable. The panel decided that the conduct in particular 1(a), 1(b) is remediable. The panel considered that the conduct in particular 1(c) is more difficult to remedy, but concluded that it is remediable.
18. The panel considered the level of Mr Fashole's insight. He has demonstrated some insight into the failure to maintain professional boundaries in particulars 1(a) and 1(b).

19. The panel considered that there was little focus in Mr Fashole's reflective statements on the vulnerability of Person 1 and the potential risk of harm to her of any breach of professional boundaries. Furthermore there was no reflection by Mr Fashole regarding the impact of his actions on the profession as a whole. The panel's assessment was that Mr Fashole's insight for particulars 1(a) and 1(b) is developing.
20. Mr Fashole has demonstrated little insight into the failure to maintain professional boundaries in particular 1(c) and his sexual motivation. The panel recognised that it is difficult to demonstrate insight when in his account to the panel he said that he did not engage in a sexual act.
21. The panel considered that it was to Mr Fashole's credit that he has maintained employment since 2019 in a role where he works with vulnerable service users and is required to maintain appropriate boundaries, albeit not in a registered social work role. Mr Fashole's employer is aware of Social Work England's investigation. The panel considered that the positive references from Mr Fashole's current employer were relevant because they confirm that Mr Fashole has maintained boundaries with the vulnerable service users.
22. The panel considered that in his current role Mr Fashole has taken steps towards remedying particulars 1(a) and 1(b), but that remediation is not complete. Mr Fashole has not remedied particular 1(c).
23. Having considered the level of Mr Fashole's insight and remediation, the panel concluded that there remains a risk of repetition of similar misconduct and consequently a risk of harm to service users.
24. In the circumstances, public confidence in the profession would be seriously damaged if the panel were to conclude that Mr Fashole's fitness to practise is not impaired.
25. The panel concluded:
 - Mr Fashole has in the past and is liable in the future to put service users at unwarranted risk of harm;
 - Mr Fashole has in the past brought and is liable in the future to bring the profession into disrepute;
 - Mr Fashole has in the past and is liable in the future to breach a fundamental tenet of the profession.The panel therefore concluded that Mr Fashole's fitness to practise is currently impaired.

The final hearing panel on 21 October 2021 determined the following with regard to sanction:

26. "The panel considered the sanctions in ascending order of seriousness. The panel considered the option of taking no action, giving advice, or imposing a warning. These options do not restrict Mr Fashole's registration and therefore would be insufficient to protect the public, given that the panel has concluded that there is a risk of repetition of similar misconduct. These sanctions are at the lower end and they would be insufficient to maintain public confidence in the profession and mark the gravity of Mr Fashole's conduct."
27. The panel next considered the option of a conditions of practice order. The panel had regard to relevant guidance in the sanctions guidance.
28. "This guidance indicated to the panel that a conditions of practice order was not likely to be sufficient to protect the public or the public interest. Mr Shephard submitted that the panel could formulate conditions of practice similar to those which were in place from September 2020 to February 2021 which were considered sufficient to protect the public and the wider public interest. The panel considered that its role was different to that of an interim orders panel and that the circumstances were different in September 2020. At that time the panel was assessing risk, following a change in Person 1's statement in which she stated that Mr Fashole behaved professionally and there was no improper sexual contact. In contrast, this panel has concluded that Mr Fashole engaged in a sexually motivated sexual act and that there remains a risk of repetition of similar conduct.
29. The panel decided that it was not possible to formulate conditions of practice which mitigated against the risk of repetition of sexually motivated behaviour. Such behaviour often occurs outside the workplace, as it did in this case, and is not within the scope of supervision. The conduct is a behavioural failing and conditions would not address the heart of that concern.
30. A conditions of practice order would also be insufficient to mark the gravity of the misconduct and the breach of a fundamental tenet of the profession. The sanctions guidance highlights the reasons why sexually motivated conduct and a breach of trust are regarded as particularly serious. Conduct of this nature has the potential to undermine the public's trust in social workers and in the profession. It is important for the panel to impose a serious sanction which reiterates and reinforces the message that such behaviour is entirely unacceptable for social workers."
31. The panel next considered the imposition of a suspension order. In considering this option the panel noted the sanctions guidance.
32. "The panel reviewed the mitigating features and considered whether weight should be given to them. An unusual feature of the case is that the panel have made no findings on the nature of the sexual act. In these circumstances, the seriousness of the conduct can only be assessed by reference to Mr Fashole's very limited description of it in his statement dated 30 July 2019. The panel considered that the absence of evidence that the conduct

was at the more serious end of the scale of seriousness was a mitigating factor. In particular, the absence of evidence of predatory behaviour, grooming, or a course of sexually motivated conduct was relevant.

33. The panel considered that a description of the misconduct overall, is that there was an initial breach of professional boundaries which provided the opportunity for an isolated sexually motivated sexual act.
34. The panel has also concluded that the conduct is remediable, which will not be the case for many cases involving sexually motivated conduct. The panel has not found that there is a deep-seated attitudinal issue which will prevent Mr Fashole from remedying his misconduct. While Mr Fashole has demonstrated very little insight into the sexually motivated misconduct, the panel recognised that he has not had the opportunity to reflect on the panel's decision. In his reflection on his breaches of professional boundaries Mr Fashole demonstrated a willingness and capability to learn and change his behaviour.
35. The panel also considered that the time that has elapsed since the events in 2019 with no repetition of similar conduct is relevant, particularly because Mr Fashole has been working in the social care field with very vulnerable service users.
36. The panel decided that it was appropriate to give weight to the mitigating features and that this is a case where there is a realistic prospect that Mr Fashole might be rehabilitated to safe practice as a social worker. Mr Fashole would be required to demonstrate a level of insight so that the risk to the public is reduced to an acceptable level.
37. The panel therefore decided that a suspension order is sufficient to protect the public.
38. The panel considered whether a suspension order would be sufficient to maintain public confidence in the profession and to uphold the required standards for social workers. The panel considered that a suspension order is a serious sanction. It sends a very clear message to the profession and to the public that misconduct of this nature is contrary to the values and principles of the profession."
39. The panel considered the length of the suspension order. It considered the sanctions guidance.
40. "The panel noted that Mr Fashole has been subject to restrictions on his practice since August 2019 and that he has not worked as a social worker during that time. The consideration of deskilling was therefore relevant. The panel did not consider that this was a case where a suspension period of more than one year was required on the grounds of public confidence.
41. The panel considered the period during which Mr Fashole was subject to an interim order as part of its consideration of proportionality. The panel noted that this is not a case where there has been a long delay in bringing the case to a final hearing, and that the case was

originally due to be completed in March 2021, but was adjourned at Mr Fashole's request. When considering fairness and proportionality the panel also noted that while Mr Fashole was subject to an interim order Mr Fashole did not use the time to develop his insight, rather he has retracted admissions previously made and that this has undermined previous evidence of insight and remorse. In the circumstances, the panel considered that the period of interim restrictions did not affect the proportionality of the length of the suspension.

42. The panel decided that the appropriate length of the suspension order is twelve months. Any lesser period would not be sufficient to mark the gravity of the misconduct and the breach of a fundamental tenet of the profession. A longer period was not required, taking into account the risk of deskilling and the guidance in the sanctions guidance. The panel considered that a period of twelve months would allow Mr Fashole sufficient time to reflect on the panel's decision and prepare evidence for a review panel.
43. The panel therefore decided that the appropriate and proportionate order is a suspension order for a period of twelve months.
44. The suspension order will be reviewed before it expires and a future review panel may be assisted by the following evidence:

Evidence of any training courses or CPD particularly those relating to the concerns in this case including the maintenance of proper professional boundaries;

Evidence of Mr Fashole's reflection on the findings of the panel including the impact of the conduct found proved on the service user, members of the public, and the reputation of the profession."

Social Work England submissions:

45. The panel heard submissions from Mr East as to the background and the previous panel's findings in relation to impairment and sanction. He reminded the panel that this was the first review of the final order made on 21 October 2021 and that it is due to expire on 17 November 2022.
46. Mr East referred the panel to the finding regarding 1c), namely that Mr Fashole had engaged in a sexual act with Person 1 and that this was more difficult to remediate. The panel at the final hearing did not consider that this was a case of being a pre-meditated act or one of grooming. In the circumstances that panel did consider that Mr Fashole's conduct was remediable.
47. Mr East referred the panel to the submissions by Mr Fashole dated 3 September 2022, which had been provided for the purposes of this hearing, which addressed his reflection on the findings by the panel on 21 October 2021 and training undertaken since then.

48. Mr East submitted that there was little focus within Mr Fashole's reflection on the vulnerability of Person 1, the sexual misconduct, the risk of harm or the effect on the social work profession.
49. Mr East referred the panel to the training that was mentioned in Mr Fashole's submission, which apparently took place over 3 days, but there was no evidence of its content, completion or a certificate confirming this.
50. Mr East submitted that Social Work England was "neutral" on the type of order that the panel may wish to make, but did refer to its submissions of 2 September 2022 contained within the Service Bundle, which indicated that "should the Panel determine that Mr Fashole is not currently impaired then they will be invited to allow the current Interim Suspension Order to lapse. However, if the Panel consider that Mr Fashole's fitness to practise remains impaired then Social Work England will invite them to consider a further extension of the Suspension Order for a period of 6 months to allow Mr Fashole to provide further evidence of insight and training or Conditions of Practice if they feel that workable conditions can now be drafted."

Social Worker submissions:

51. In his absence Mr Fashole provided written submissions dated 3 September 2022 indicating that he had undertaken 3-day training in Professional Boundaries with CACCOU Family Services in August 2022 and further engaged in series of reflective sessions on the online platform for Social Workers.
52. With regard to insight and reflection Mr Fashole indicated that he had focussed on professional boundaries and would seek guidance and consult with line management on this issue in the future if he was permitted to practise again.

Panel decision and reasons on current impairment:

53. 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.
54. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and the new documentation provided by Mr Fashole, namely his reflective statement dated 3 September 2022. The panel also took account of the submissions made by Mr East on behalf of the Social Work England.
55. 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.

56. If the panel decided that Mr Fashole'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.
57. 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.
58. The panel first considered whether Mr Fashole's fitness to practise remains impaired.
59. The panel noted that the original panel found that Mr Fashole had limited insight and had demonstrated insufficient remediation. This panel noted the extent to which Mr Fashole has acted upon the recommendations of the previous panel as to what might assist a future reviewing panel.
60. With regard to the findings of the original panel that Mr Fashole had continued to engage with Person 1 in text message communication and visited her home address (1a, 1b), the panel was concerned that Mr Fashole had demonstrated limited insight into his conduct within his submission dated 3 September 2022. His reflections and submission lacked depth, were general in nature and did not focus on the impact on Person 1.
61. The panel was also concerned that Mr Fashole's submission indicated that he would consult with his supervisors regarding boundaries and professional behaviour. The panel would expect Mr Fashole, as an autonomous professional to know proper professional boundaries.
62. With regard to the finding that Mr Fashole had engaged in a sexual act with Person 1 the panel noted that Mr Fashole's written submissions were silent on this matter. He did not reflect on the impact on Person 1 or the social work profession. There was no evidence of any remorse, insight or remediation at all.
63. With regard to Mr Fashole's training since the final order it noted that he had only completed one course in August 2022, but there was no information on the content, its value or currency. The panel was concerned that Mr Fashole had not demonstrated a commitment to training over the past 12 months. The panel had no previous knowledge of the training provider CACCOU Family Services, nor any confirmation as to whether the course was social work specific.
64. The panel noted that Mr Fashole had not provided any up to date references from his employer for this hearing. Whilst the final hearing panel did not advise that this should be provided to a future panel the current panel noted that he had produced such references at the final order hearing and this may have been of assistance today.

65. Having considered all of the circumstance of this case the panel decided that there is a risk of repetition due to the lack of insight demonstrated by Mr Fashole.
66. The panel when considering the wider public interest decided that a finding of impairment was necessary to maintain public confidence and to uphold the standards of the profession.
67. The panel made its decision on both grounds of impairment and 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:

68. Having found Mr Fashole'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.
69. The panel considered the submissions made by Mr East on behalf of Social Work England, during which he invited the panel to consider imposing a suspension order, although ultimately Social Work England is neutral on the type of order that should be made.
70. The panel also took into account the Sanctions Guidance published by Social Work England.
71. The panel was mindful that the purpose of any sanction is not to punish Mr Fashole, 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 Fashole's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action, Advice or Warning

72. 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 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 Fashole's practice and would therefore not protect the public from the risks that have been identified.

Conditions of Practice Order

73. 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 Fashole would be required to visit service users and that his misconduct had taken place outside of the workplace.

Suspension Order

74. Having determined that a conditions of practice order would not be appropriate, the panel then went on to consider if a suspension order would be the most appropriate sanction
75. The panel noted that Mr Fashole had been suspended from practising for the last 12 months. This had provided him with an opportunity to complete regular training to address the concerns identified by the findings by the final order panel and to comprehensively reflect on his behaviour including demonstrating insight and remediation. The panel concluded that Mr Fashole had provided limited evidence of progress and none with regard to his sexual misconduct. There is no mention within Mr Fashole's written submissions in relation to 1(c), namely that he engaged in a sexual act, nor regulatory concern 2, that his conduct was sexually motivated. Mr Fashole had failed to take the initiative to address all of the concerns of the final hearing panel and this was of particular concern for the panel.
76. Although the final order panel had imposed a suspension order this panel took into account the new circumstances since 21 October 2021, in particular Mr Fashole's lack of insight and remediation demonstrated in his submission dated 3 September 2022 and decided that a further suspension order would not be sufficient to protect the public and the wider public interest, specifically maintaining public confidence in the profession.

Removal Order

77. 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 is necessary. Mr Fashole had failed to demonstrate insight or remediation at all with regard to his sexual misconduct and as such there is a risk of repetition. In addition with regard to the other matters within the findings (1a, 1b), he has failed to sufficiently address or demonstrate insight into this.
78. The panel took into account the Sanctions Guidance which states that in relation to sexual misconduct "abuse of professional position to pursue a sexual or improper emotional or social relationship with a service user... is a serious abuse of trust. Many people will be accessing social care for reasons that increase their vulnerability and that of their family. Pursuit of a sexual or improper emotional or social relationship with a vulnerable person is likely to require a more serious sanction against a social worker." The Sanction Guidance goes on to state that "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."
79. The panel reminded itself that the final hearing panel had found that Mr Fashole had engaged in a sexual act with Person 1, a former service user and found that this conduct was sexually motivated. The panel decided that Mr Fashole's case falls into the category

requiring a more serious sanction, in this case a removal order, because of the nature and gravity of his misconduct and the ongoing risk of repetition.

80. 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 Fashole from practising. However, the panel took into account that Mr Fashole had been given an opportunity to evidence his insight and remediation in relation to the 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.
81. In reaching this conclusion the panel balanced the public interest against Mr Fashole's interests. The panel took into account the consequential personal and professional impact a removal order may have upon Mr Fashole, 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:

82. 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,
83. the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
- a. 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.
84. 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.

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

Review of final orders

85. 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.

86. 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.