

Social Worker: Gary James
Gilchrist

Registration Number: SW26064

Fitness to Practise

Final Order Review Meeting

Meeting Venue: Remote meeting

Date of meeting: 3 November 2022

Final Order being reviewed:
Suspension Order – (expiring 15 December 2022)

Hearing Outcome:
Removal Order (to take effect upon expiry of current suspension order on 15
December 2022)

Introduction and attendees

1. This is the second review of a final suspension order originally imposed by agreement between Mr Gilchrist and Social Work England case examiners for a period of 12 months, taking effect on 16 October 2020, and expiring on 15 October 2021. The order was first reviewed by a panel of adjudicators on 27 August 2021 when a further suspension order was imposed for a period of 14 months, expiring on 15 December 2022.
2. Mr Gilchrist did not attend today and was not represented. Social Work England was represented by Capsticks LLP, who were not in attendance, and their written submissions are set out within the notice of hearing letter.

Adjudicators	Role
Andrew Skelton	Chair
Jacqui Smith	Social Work Adjudicator

Hearings Team/Legal Adviser	Role
Hannah Granger	Hearings Officer
Mollie Roe	Hearings Support Officer
Judith Walker	Legal Adviser

Service of Notice

3. 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 3 October 2022 and addressed to Mr Gilchrist at his address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register detailing Mr Gilchrist's registered address;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 3 October 2022 the writer instructed Docucentre to send by special delivery post to Mr Gilchrist at the address referred to above: Notice of Hearing and related documents;

- A copy of the Royal Mail Track and Trace Document indicating “signed for” delivery to Mr Gilchrist’s registered address on 4 October 2022.

4. The panel accepted the advice of the legal adviser in relation to service of notice.
5. Having had regard to Rules 16, 44 and 45 of the Fitness to Practise Rules 2019 (the Rules) and all of the information before it in relation to service of notice, the panel was satisfied that notice of this hearing had been served on Mr Gilchrist in accordance with the Rules.

Proceeding in the absence of Mr Gilchrist and as a meeting:

6. The notice of final order review hearing informed the social worker that in line with the current government guidance concerning the COVID-19 virus (Coronavirus) pandemic, 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 18 October 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. 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.”
7. The panel first considered whether it was fair and just to proceed with the review in Mr Gilchrist’s absence. It considered all of the information before it, noting that Mr Gilchrist had not engaged with Social Work England since agreeing to the original suspension order in September 2020. Having already found that it was satisfied in relation to service and having noted that the notice of hearing had been delivered to Mr Gilchrist’s registered address where it was signed for, the panel was satisfied that Mr Gilchrist should be aware of today’s review. The panel concluded that Mr Gilchrist had chosen voluntarily to absent himself from these proceedings. Mr Gilchrist had not applied for an adjournment and the panel considered that there was no reason to believe that adjourning today’s proceedings would secure his attendance. It considered that there were public protection concerns arising from the allegations and noted that the suspension order on Mr Gilchrist’s registration will expire on 15 December 2022. The panel weighed the interests of Mr Gilchrist in regard to his 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 Mr Gilchrist’s absence.
8. 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.”

9. The panel was satisfied that it had sufficient information to proceed with this review and that it would be fair and appropriate to conduct the review in the form of a meeting in accordance with Rule 16(c).
10. The panel noted that there was information within the documentation that related to the health of Mr Gilchrist. The panel recognised Mr Gilchrist's right to privacy in relation to personal information in relation to his health and therefore two versions of this determination will be produced, with a redacted version for publication.

Review of the current order:

11. 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.
12. The current order is due to expire at the end of 15 December 2022.

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

13. The regulatory concerns accepted by Mr Gilchrist which resulted in the agreed suspension order being imposed were as follows:

While registered as a social worker at Newcastle City Council:

1. *In January 2020 you sent an inappropriate text message to a colleague;*
2. *Your action at 1 above was sexually motivated;*
3. *[PRIVATE]*
4. *As a result of regulatory concerns 1 and 2 above your fitness to practise is impaired by reason of misconduct.*
5. *As a result of regulatory concern 3 above, your fitness to practise is impaired due to your health.*

The previous final order review panel on 27 August 2021 determined the following with regard to impairment:

14. *"In considering the question of current impairment, the panel undertook a comprehensive review of the current circumstances. It had regard to all of the documentation before it,*

which essentially was that contained within the case examiners' decision. The panel also took account of the submissions made by Ms Fatania on behalf of the Social Work England.

- 15. 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. It also had regard to guidance issued by Social Work England in respect of impairment (contained within the Sanctions guidance), and in respect of self-represented social workers. It was aware that impairment is not defined within legislation and is a matter of judgement for the panel having considered all of the evidence before it.*
- 16. The tests for impairment are set out in the cases of Meadow v General Medical Council [2007] 462 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (Admin). They confirm that the issue of impairment is not about punishment but rather the protection of the public and maintaining confidence in the profession. Guidance issued by Social Work England on impairment identifies factors which may impact on a decision in respect of impairment:*
 - Risk - to what extent did the social worker's actions pose a risk to the public;*
 - Repetition - have actions that risked the safety of the public been, or could they be, repeated;*
 - History – whether the social worker has been subject to previous adverse regulatory findings;*
 - Insight - has the social worker correctly and fully recognised and acknowledged what they did wrong;*
 - Remediation – has the social worker put right any deficiencies or shortfalls in their practise or behaviour;*
 - Public confidence in the profession - some concerns are so serious that action is required even if no current risk is identified. Dishonesty cases are likely to be viewed particularly seriously given the access social workers have into people's homes and lives;*
 - Admissions – admission of facts does not lessen the seriousness of a concern*
 - Harm - the extent to which the risk of harm, or the actual harm caused, could and should have been foreseen by the social worker;*
 - Testimonials - the provision of up to date credible information about the social worker's current practise or standing, preferably given in the knowledge of the regulator concerns.*

17. *The panel is aware that the test of impairment is expressed in the present tense in relation to the need to protect the public against the acts and omissions of those who are not fit to practise, but this cannot be achieved without taking account of the way a person has acted or failed to act in the past.*
18. *There is both a personal element and a public element to impairment. When assessing the likelihood of recurrence of harm, panels can take account of the degree of harm caused by the social worker, recognising that the harm could have been greater or less than the harm which was intended or reasonably foreseeable. Panels may also take account of testimonials as to his practice, but no such information had been provided to the panel by the social worker, which was perhaps not surprising given his previously expressed intention not to practise in the immediate future.*
19. *The panel considered the social worker's current fitness to practise firstly from the personal perspective. It had regard to the relevant factors of risk, repetition, history, harm and remediation. With regard to insight, the panel took account of his acceptance that he sent the inappropriate message, and the remorse expressed. It was satisfied that Mr Gilchrist understood the serious nature of the conduct and had demonstrated insight which satisfied the case examiners.*
20. *The case examiners did not find the conduct incapable of remediation, but did identify that without resolution of the health issues, there was a risk of repetition of inappropriate conduct. The panel had no additional information as to any treatment undertaken by Mr Gilchrist, and was conscious that the COVID19 coronavirus pandemic had adversely impacted access to such treatment. It did not consider that it had been provided with any information which addressed the concerns identified by the case examiners, and therefore concluded that Mr Gilchrist remained impaired on the private aspect of the test for impairment.*
21. *The Panel then considered the "public" element of the test for impairment. In considering the public component of impairment, the Panel had regard to the important public policy issues which include the need to maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour by registered professionals. It recognised that some concerns are so serious that action is required even if the social worker poses no current risk to the public, because not marking the conduct could undermine public confidence in social workers generally, or may fail to maintain the professional standards expected of social workers.*
22. *In this case, one inappropriate text message had been sent outside of work to a colleague. There was no suggestion that any harm had been caused to service users, or that they had been put at risk of harm. However, the panel was concerned that in the absence of any information as to Mr Gilchrist's current state of health, it could not have confidence that there was no risk of repetition of uninhibited behaviour. Although the agreed suspension could be said to have dealt with the misconduct aspect of this case, the panel was satisfied that a finding of impairment on the "public" aspect of impairment is also required to uphold the standards of the profession and public confidence in the profession and the regulator. Mr*

Gilchrist has not engaged with his regulator at all since September 2020, nor has he provided any information to the panel. A member of the public or a fellow professional with knowledge of the facts of this matter would be surprised if a finding of impairment were not made given the information available to the panel, including the unaddressed risk of repetition. Accordingly, the Panel found Mr Gilchrist's fitness to practise remains impaired on the public aspect of the test for impairment."

The previous final order review panel on 27 August 2021 determined the following with regard to sanction:

23. *"The panel was conscious that Social Work England invited it to extend the agreed suspension order for a further 14 months if it found Mr Gilchrist's practice to be impaired.*
24. *Given that the panel was satisfied that Mr Gilchrist remained impaired on both aspects, it was entirely satisfied that an order was required for the protection of the public interest, to protect the public and in Mr Gilchrist's own interest. Mr Gilchrist has not engaged with the regulatory process or provided any evidence in respect of his current insight or remediation. The panel therefore concluded that there was a risk of repetition if his health conditions remained untreated.*
25. *Having found Mr Gilchrist's fitness to practise remains impaired on both aspects and that an order was necessary and proportionate to protect the public and in the wider public interest, the panel was conscious that it was expected to start with the least restrictive sanction available to it until it reached a decision which adequately managed the risk and was proportionate in the circumstances. It was conscious that it could impose any order that would have been available to a panel undertaking a final hearing of the concerns.*
26. *The panel then considered whether it could formulate workable and proportionate conditions to impose on Mr Gilchrist's ability to practise which were not tantamount to a suspension. It was mindful that its role was not to punish Mr Gilchrist, rather to protect the public and the wider public interest, which includes maintaining public confidence in the profession and by upholding proper standards of conduct and behaviour. It was also concerned about Mr Gilchrist's own interests given the admissions made.*
27. *The panel concluded that no appropriate and workable conditions could be formulated to manage the risk to the public or in the public interest given the lack of engagement by Mr Gilchrist in this regulatory process since September 2020. It had no current information in relation to any further insight, remediation or Mr Gilchrist's intentions for the future. It was conscious that the sanctions guidance issued by Social Work England specifically provides that "Decision makers must also be satisfied that the social worker is willing and capable of complying with conditions".*
28. *The panel then considered the imposition of an order of suspension, noting the sanction guidance provides that "Suspension is appropriate where no workable conditions can be formulated that can protect the public or the wider public interest, but where the case falls*

short of requiring removal from the register or where removal is not an option". The panel accepted the submission of Ms Fatania that removal was not available to it given the existence of health concerns. There was no evidence before it to undermine the case examiners' determination that the misconduct was likely to be rooted in Mr Gilchrist's health conditions, and that the misconduct in isolation would not be sufficient to justify removal in any event.

- 29. The panel therefore determined that the appropriate and proportionate order in this matter was that of suspension. It then considered the term of that suspension, noting that Social Work England sought a period of 14 months from the expiry of the existing order. Given the lack of engagement by Mr Gilchrist, the panel could not justify any shorter term of suspension being imposed than that requested by Social Work England. The 14 month period could be reviewed early if Mr Gilchrist engages and is in a position to demonstrate an improvement in his health. Otherwise, it would allow Social Work England to seek his removal from the register at its expiry, thus dealing with the matter in the most efficient way possible while protecting the public.*
- 30. The panel was conscious that it could not bind a future reviewing panel, but considered that any future reviewing panel would be greatly assisted by Mr Gilchrist engaging with his regulator and attending the next review of this order. The provision of up to date medical information would also be of assistance to it, as would any clarity he could provide as to his future intentions.*
- 31. The panel therefore imposed an order of suspension on Mr Gilchrist for a period of 14 months from the date of the expiry of the accepted disposal suspension order. The order will therefore expire on 15 December 2022 if not extended or discharged through early review".*

Social Work England submissions:

- 32. The panel noted the written submissions from Social Work England set out in the notice of hearing dated 3 October 2022 which are as follows:*

"If the Social Worker does not further engage with Social Work England prior to, or at, the review hearing Social Work England invite the Panel to impose a Removal Order.

Since the imposition of the Suspension Order, the Social Worker has not been in contact with Social Work England nor provided any supporting evidence to demonstrate any action taken throughout the duration of the order.

In light of the above, Social Work England submit that the Panel may reasonably conclude that the Social Worker's fitness to practise remains impaired.

The Social Worker was made aware in advance of the previous review hearing that a Removal Order would be available to a future reviewing Panel, however he has not engaged since that hearing.

If the Panel are of the view that the Social Worker ought to be given a further final chance to engage, then they are invited to consider imposing a 6 months Suspension Order. However Social Work England consider that further engagement is unlikely in this case, therefore the most appropriate sanction at this stage is removal from the register.”

Social Worker submissions:

33. Mr Gilchrist did not provide any written submissions for the panel to consider.

Panel decision and reasons on current impairment:

34. 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 case examiners and of the previous panel. It had regard to all of the documentation before and it took account of the written submissions on behalf of Social Work England. However, it has exercised its own judgement in relation to the question of current impairment.
35. 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.
36. The panel first considered whether Mr Gilchrist’s fitness to practise remains impaired.
37. The panel noted that the case examiners who considered the case in September 2020 commented that:

“While sending the message appears to have been an isolated incident, as there is insufficient evidence that the social worker’s health issues are under control, there is a realistic prospect that adjudicators may find a risk of repetition. The case examiners are mindful that, given the ongoing nature of the social worker’s health conditions, the possibility of a further incident of misconduct, precipitated by his health issues, cannot be completely excluded.”.

“[PRIVATE]. Until the point his health situation is fully under control, it could be argued the social worker represents an ongoing and significant risk to public safety, should he continue to practise.

It seems likely that adjudicators would find that the actions outlined by this case, if made public, could bring the profession into disrepute. As such, it seems that appropriate action is needed by the regulator in order to uphold and maintain proper standards in the profession, which includes making clear the types of behaviour which are completely unacceptable. The public would also likely be concerned if the

regulator did not take action where a social worker has ongoing struggles with management of a health condition.

In light of the issues discussed above, the case examiners have determined that there is a realistic prospect that adjudicators would make a finding of current impairment.”

38. The panel further noted the case examiners comments that:

“While the text message sent by the social worker is highly inappropriate, and while his actions could be construed as being sexually motivated, the information suggests that this was an isolated incident [PRIVATE]. The case examiners have seen no evidence indicating that the social worker has any deep seated attitudinal issues. To the contrary, his manager cites no other concerns and his colleague speaks highly of his abilities as a social worker. Whilst not making his actions any less appropriate, the case examiners further note this matter occurred between two colleagues at the weekend. The message was not sent during the course of his work with vulnerable service users, indicating an abuse of his position.”

39. The panel also had regard to the decision, in August 2021, of the previous review panel which noted that the case examiners did not find Mr Gilchrist’s conduct incapable of remediation but did identify that without resolution of the health issues, there was a risk of repetition of uninhibited behaviour. The previous review panel stated that *‘although the agreed suspension could be said to have dealt with the misconduct aspect of this case, the panel was satisfied that a finding of impairment on the ‘public’ aspect of impairment is also required to uphold the standards of the profession and public confidence in the profession and the regulator. Mr Gilchrist has not engaged with his regulator at all since September 2020, nor has he provided any information to the panel. A member of the public or a fellow professional with knowledge of the facts of this matter would be surprised if a finding of impairment were not made given the information available to the panel, including the unaddressed risk of repetition.’*

40. The previous review panel, in its written decision, clearly advised that the 14 month period of suspension which it had imposed could be reviewed early if Mr Gilchrist engaged and was in a position to demonstrate an improvement in his health. Otherwise, it would allow Social Work England to seek his removal from the register at its expiry, thus dealing with the matter in the most efficient way possible while protecting the public.

41. The previous panel also stated that any future reviewing panel would be greatly assisted by Mr Gilchrist engaging with his regulator and attending the next review of the order and that provision of up to date medical information would also be of assistance, as would any clarity Mr Gilchrist could provide as to his future intentions.

42. The panel today finds itself in a similar position to the previous review panel. Mr Gilchrist has not engaged with Social Work England since the previous review hearing and he has not provided any information to this panel. Accordingly there is no information to indicate that the concerns regarding Mr Gilchrist’s health have been addressed or to provide any reassurance that there is no real risk of repetition of the behaviour which constituted the

misconduct aspect of this case. Although Mr Gilchrist in September 2020, admitted his misconduct and expressed remorse, and was open about his health condition the panel today has no information to indicate whether his health has improved, or whether he has sought or is receiving treatment or assistance in relation to his health.

43. Similarly there is no information as to whether Mr Gilchrist has reflected further on the matters which led to these proceedings and whether he has developed insight into why these events occurred and how he would prevent a recurrence. In addition, the panel has no information to indicate that Mr Gilchrist has been keeping up to date with current social work practice and no information to indicate that he has any wish to resume working as a social worker, either now or in the future.
44. In light of the above the panel cannot be satisfied that Mr Gilchrist's health issues have been satisfactorily addressed or managed and in consequence there is a risk that his impairing health condition remains or may recur, with an associated risk of repetition of his misconduct. Accordingly, the panel considers that Mr Gilchrist may pose a risk to the public and that his fitness to practice remains impaired on the grounds of misconduct and health.
45. Whilst the panel acknowledges that the agreed suspension of twelve months could have been sufficient to send a clear message to the public and the profession about the unacceptability of Mr Gilchrist's misconduct in sending a highly inappropriate text message, his subsequent failure to engage with his regulator and the risk of repetition of his misconduct is such that the panel considers that public confidence would be undermined if a finding of current impairment was not found today in respect of both misconduct and health.
46. Accordingly the panel concluded that Mr Gilchrist's fitness to practice remains currently impaired on the grounds of misconduct and health.

Decision and reasons on sanction:

47. Having found Mr Gilchrist'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 on behalf of Social Work England along with all the information provided to it. It also accepted the advice of the legal adviser and took into account the Sanctions Guidance published by Social Work England.
48. The panel was mindful that the purpose of any sanction is not to punish Mr Gilchrist, 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 Gilchrist's interests with the public interest and by considering each available sanction in ascending order of severity.

No Action

49. The panel bore in mind that it found Mr Gilchrist to be currently impaired on the grounds of misconduct and health and that in the absence of any information that his health condition has been addressed or managed there remains a risk that his impairing health condition remains or may recur, with an associated risk of repetition of his misconduct. In the absence of exceptional circumstances, it would be inappropriate to take no action as this would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

50. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Gilchrist's ability to practise and is therefore inappropriate given the current risk to public safety. Additionally, the panel concluded that issuing advice or a warning would be inappropriate and insufficient to meet the public interest.

Conditions of Practice Order

51. The panel went on to consider a conditions of practice order. The panel took the view that Mr Gilchrist's health and misconduct may potentially be capable of being remedied but this is dependent on his willingness to engage with remediation and comply with conditions. Mr Gilchrist has provided no information to suggest that he would do so and has failed to respond to the suggestions made by the previous review panel regarding information he 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 Mr Gilchrist's continued lack of engagement and the absence of any information to suggest that he may engage in the future.

Suspension Order

52. 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. The panel considered whether it may be appropriate to impose a further period of suspension to allow Mr Gilchrist further time to engage with Social Work England and provide information about his current circumstances and possible desire to return to social work. However, the panel bore in mind that Mr Gilchrist has not engaged at all in the past two years despite correspondence from Social Work England and a clear message from the previous review panel as to how he might engage in the future. In addition the previous review panel made it clear that, in the absence of engagement, the next review panel may consider a removal order.
53. The panel today considered that it had no information to suggest that Mr Gilchrist's failure to engage will change in the future. He has not engaged since accepting the caseworkers'

proposal in September 2020 despite being advised how he 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 not send an appropriate message to the public and to social workers about the standards expected of social workers and may undermine public confidence in the profession. As such, a further period of suspension would be insufficient to protect the wider public interest.

Removal Order

54. 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.
55. Accordingly the panel determined that a removal order be made in respect of Mr Gilchrist's registration.

Right of Appeal:

56. 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.
57. 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.
58. 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.

59. 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

60. 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.

61. 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.