

Social worker: Kelvin Baxter Foote

Registration number: SW25114

Fitness to Practise

Final Order Review Meeting

Date of meeting: Wednesday 11 January 2023

Meeting venue: Remote meeting

Final order being reviewed:

Conditions of practice order (expiring 24 February 2023)

Hearing Outcome: Impose a new order namely removal with effect from the expiry of the current order

Introduction and attendees

1. This is the second review of a conditions of practice order originally imposed for a period of 18 months on 29 January 2022, following a finding that Mr Foote's fitness to practise is impaired by reason of misconduct.
2. Mr Foote did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP but no representative attended. Social Work England's written submissions are set out within the Notice of Hearing letter which was sent to Mr Foote on 30 November 2022.

Adjudicators	Role
John Walsh	Chair
Rachael Kumar	Social worker adjudicator

Hearings Team/Legal Adviser	Role
Paul Harris	Hearings officer
Jo Cooper	Hearings support officer
Margaret Obi	Legal adviser

Service of Notice:

4. The panel of adjudicators ('the panel') had regard to the documents contained within the service and supplementary bundle, which included the following:
 - An extract from the Social Work England Register confirming the email address held by Social Work England for Mr Foote.
 - A copy of the Notice of Hearing, dated 30 November 2022, addressed to Mr Foote at his email address as it appears on the Register.
 - A copy of the email, dated 30 November 2022, enclosing the Notice of Hearing.

- A copy of a Statement of Service, signed by a paralegal at Capsticks LLP, confirming that on 30 November 2022, the Notice of Hearing was sent to Mr Foote's registered email address.
5. The panel accepted the advice of the legal adviser in relation to service of the Notice of Hearing.
 6. The Notice of Hearing confirms the date and time of the hearing and that it would take place remotely. In these circumstances, the panel was satisfied that Mr Foote has been given reasonable notice of the substantive review hearing. The panel concluded that the Notice of Hearing had been properly served on Mr Foote in accordance with Rules 44 and 45.

Proceeding with the final order review as a meeting:

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

*"If you wish to attend the electronic hearing, please confirm your intention **by no later than 4pm on 14 December 2022. Unless we hear from you to the contrary, we shall assume that you will not be attending the electronic hearing and Social Work England may, decide to deal with the review as a meeting** [emphasis in the original]. If Social Work England do hold a meeting, the adjudicators will be provided with a copy of this letter setting out Social Work England's submissions and a copy of any written submissions you provide."*

8. The panel also had regard to Rule 16(d) of the Rules which provides:

"Where the registered social worker makes written submissions and states that they do not intend to attend before the regulator, the regulator may direct that the question of whether an order should be made is determined by means of a meeting."

9. The panel was satisfied that it would be fair, proportionate, and appropriate to conduct the review in the form of a remote meeting for the following reasons:
 - a. Mr Foote sent an email to Social Work England on 30 August 2022 following receipt of a copy of the conditions of practice order and notification that these conditions came into effect on 25 August 2022. His response was as follows:

"All I can do in response is to repeat my statement that I no longer wish to be either employed OR registered as a Social Worker.

To this end I have ceased the Standing Order for my SW England registration, after I have made 3 half-yearly payment to your, since the Competence Hearing.

As I have already stated to you on several occasions, I have made this decision , as I have found that NO social work agency will even CONSIDER enrolling me on their books, let alone putting me forward for jobs with local authorities or fostering agencies, due to the conditions on my S W practice. Hence, why would I feel any need to undertake the courses stipulated and to maintain my irrelevant , SW England registration fee?

The panel noted that Mr Foote sent a further email to Social Work England on 15 December 2022, in response to emails that had been sent to him regarding non-compliance. He stated:

"I have not completed any CPD evidence as I no longer wish to be registered as a social worker.

I have not even made any enquiries for much of the last calendar year as not a single Social Work or Care agency will even consider putting me forward to a Social Work employer, due to the conditions on my practice.

I enquired with appropriately [sic] 10 to 12 employment agencies and not ONE of them will even consider me.

Therefore I have cancelled my direct debit for my S W England registration fee. As I'm sure you will agree, this is a true catch 22 situation and one which is clearly absurd: Social Work England insist on my continued registration for a job I cannot practice and do NOT wish to practice.

Therefore, as I have repeatedly requested , please can you remove me from the register at the earliest opportunity."

In these circumstances, the panel concluded that it is reasonable to infer that Mr Foote's non-engagement is deliberate and that he has voluntarily waived his right to participate in these proceedings. The panel concluded that Mr Foote has been given a reasonable opportunity to attend the hearing or to make detailed written representations.

- b. There has been no application to adjourn and no indication from Mr Foote that he would be willing to attend on an alternative date and therefore re-listing this review hearing would serve no useful purpose.
- c. The panel acknowledged that there was unlikely to be any disadvantage to Mr Foote in proceeding with the hearing in his absence as he had made his position clear in his emails dated 30 August 2022 and 15 December 2022. In any event, the panel concluded that in choosing not to request a hearing, any potential disadvantage to Mr Foote was significantly outweighed by the strong public interest in ensuring that the review hearing is considered and determined as expeditiously as possible.

Review of the current order:

10. This final order review hearing is taking place under Paragraph 15(1) of Schedule 2 of The Social Worker's Regulations 2018 (as amended) and Social Work England's Fitness to Practise Rules 2019 (as amended).
11. The current order is due to expire at the end of 24 February 2023.

Allegations found proved at the substantive hearing

12. The allegations found proved at the substantive hearing which concluded on 29 January 2021 are as follows:

During the course of your employment as a Social Worker at Surrey County Council ("the Council") you:

1. In relation to Family A:

- a. between around February and May 2016, did not record visits in line with the supervision contract;*
- b. on or around 19 April 2016 acted inappropriately during a meeting with a Social Worker colleague, and Person 1 and Person 2 by:*
 - ii) referring to incorrect and/or out of date information when recommending a long-term foster care arrangement to Person 1 and Person 2.*

2. In relation to Family B:

- a. (withdrawn)*
- 3. On or around 19 April 2016, during a telephone call with foster carer C, you acted inappropriately, in that you:*
 - a. questioned her motivation, suggesting that she was financially driven;*
 - b. raised your voice at her.*

4. On or around 19 April 2016, you spoke to your line manager, LW, in an inappropriate manner, in that you:

- a. raised your voice and / or;*
- b. said words to the effect, "I don't care if it goes all the way up to the top I say what I think is right and I am me and no one is going to tell me any different".*

5. *On or around the 28 April 2016 you:*

- a. refused to comply with a management instruction to sit with your team;*
- b. were disruptive to staff in that you raised your voice in an open plan office while other staff were working.*

6. *In relation to Family D, between around 24 February 2016 and 19 August 2016, you received information that a known sex offender was visiting Family D's L's home and you:*

- a. did not report the Safeguarding issue to your manager;*
- b. did not record this information on Liquidlogic Children's Social Care System ("LCS") for Person 9 and/or Person 10;*
- c. did not update Family D's Risk Assessment in light of the information received.*

7. *In relation to Foster Family E, between around 20 September 2016 and 19 December 2016, you:*

- a. when completing a 'Connected Persons Assessment' form*
 - i) did not review adequately, or at all, the case information on LCS;*
 - ii) did not adequately identify historical concerns that were evident from documents that were on LCS in connection with Person 25, and/or Person 32;*
 - iii) did not take any, or any adequate, steps to address the concerns above;*

8. *Between around 9 December 2016 and 18 January 2017, in relation to Family F, you did not:*

- a. ask and/or record the responses to one or more questions pertinent to a Special Guardianship Order ("SGO") assessment;*
- b. adequately complete the SGO assessment to the required standard.*

9. *The matters at Paragraphs 1-8 constitute misconduct and/or a lack of competence.*

10. *By reason of your misconduct and/or lack of competence, your fitness to practise is impaired.*

Background

13. On 29 June 2016, the Health Care Professions Council (the HCPC), the former regulator of social workers, received a referral regarding Mr Foote. The referral was made by his former employer, Surrey County Council (the Council).
14. Mr Foote joined the Council around April 2003 as a Family Support Worker. He qualified as a social worker in 2007 and joined the Council's Fostering Service in 2008. Mr Foote was employed as a supervising social worker within the Fostering Service. His role included supervising and supporting foster carers, including conducting regular home visits, attending professionals' meetings, and providing supervision records. He was also responsible for conducting visits to potential applicants interested in fostering.
15. Mr Foote attended the substantive hearing. The allegations referred to above were found proved and an 18 month conditions of practice order was imposed.
16. The first review of the conditions of practice order took place on 7 July 2022. Mr Foote did not attend the review hearing and was not represented. The first review panel in considering impairment stated:

"26. The panel considered that, in the circumstances, it accepted the submission made by Social Work England, that Mr Foote has not demonstrated to it that he has remediated his past misconduct. The panel followed the precedent of the court in Abrahams, that, as the registrant whose practice had been found to be impaired, on a review Mr Foote has the persuasive burden of showing that he had addressed the past concerns. As a result, the panel concluded that his fitness to practice currently remains impaired.

27. In addition, the panel concluded that, in view of the past un-remediated misconduct, the panel found that Mr Foote's fitness to practise is also impaired, based on the public interest in maintaining public confidence in the profession.

28. The panel noted that the original panel found that Mr Foote had limited insight and had demonstrated no remediation in particular in relation to his safeguarding practice. This panel noted that it had no information before it to show that Mr Foote has acted upon the recommendations of the previous panel.

29. The panel therefore found Mr Foote's fitness to practise is currently impaired."

17. The first review panel went on to consider sanction and determined that the appropriate sanction was a further 6 period of conditional registration. The first review panel took the view that Mr Foote's misconduct was potentially remediable and concluded that he should be given a further opportunity to demonstrate remediation. The conditions were amended to conform with the current Conditions Bank. The current conditions are as follows:

CONDITIONS OF PRACTICE

1. You must notify Social Work England within 7 days of any professional appointment you accept or are currently undertaking and provide the contact details of your employer, agency or any organisation with which you have a contract or arrangement to provide social work services, whether paid or voluntary.

2. You must allow Social Work England to exchange information with your employer, agency or any organisation with which you have a contract or arrangement to provide social work or educational services, and any reporter or workplace supervisor referred to in these conditions.

3.

a. At any time you are providing social work services, which require you to be registered with Social Work England, you must agree to the appointment of a reporter nominated by your line manager and approved by Social Work England. The reporter must be on Social Work England's register.

b. You must not start or continue to work until these arrangements have been approved by Social Work England.

4. You must provide a report from your reporter to Social Work England every 3 months and at least 14 days prior to any review and Social Work England will make these reports available to any workplace supervisor referred to in these conditions on request.

5. You must inform Social Work England within 7 days of receiving notice of any formal disciplinary proceedings taken against you from the date these conditions take effect.

6. You must inform Social Work England within 7 days of receiving notice of any investigations or complaints made against you from the date these conditions take effect.

7. You must inform Social Work England if you apply for social work employment/self-employment (paid or voluntary) outside England within 7 days of the date of application.

8. You must inform Social Work England if you are registered or subsequently apply for registration with any other UK regulator, overseas regulator or relevant authority within 7 days of the date of application [for future registration] or 7 days from the date these conditions take effect [for existing registration].

9.

a) At any time, you are employed, or providing social work services, which require you to be registered with Social Work England; you must place yourself and remain under the supervision of a workplace supervisor nominated by your line manager

and agreed by Social Work England. The workplace supervisor must be on Social Work England's register.

b) You must not start or continue to work until these arrangements have been approved
by Social Work England.

11. You must work with your supervisor to formulate a personal development plan, specifically designed to address the shortfalls in the following areas of your practice:

- Assessing and managing risk;
- Caseload management and prioritising;
- Timely and accurate recording.

12. You must provide a copy of your personal development plan to Social Work England within 28 days from the date of starting any social worker role and an updated copy 28 days before any review.

13. You must provide reports from your workplace supervisor to Social Work England every 3 months and at 28 days prior to any review, and Social Work England will make these reports available to any reporter referred to in these conditions on request.

14. You must not work as an independent social worker and must only work as a social worker at premises where other social workers are employed.

15. You must undertake 8 hours of CPD in relation to:

- safeguarding;
- child and/or adult protection (as appropriate);
- reporting and recording;
- professional relationships and working as part of a team.

16. You must provide evidence of CPD undertaken to Social Work England within 28 days before any review.

17. You must provide a written copy of your conditions, within 7 days from the date these conditions take effect, to the following parties confirming that your registration is subject to the conditions listed at 1 to 18 above:

- i. Any organisation or person employing or contracting with you to undertake social work services whether paid or voluntary;
- ii. Any locum, agency or out-of-hours service you are registered with or apply to be registered with in order to secure employment or contracts to undertake social work services whether paid or voluntary (at the time of application);
- iii. Any prospective employer who would be employing or contracting with you to undertake social work services whether paid or voluntary (at the time of application);

- iv. Any organisation, agency or employer where you are using your social work qualification/knowledge/skills in a non-qualified social work role, whether paid or voluntary (at the time of application).

You must forward written evidence of your compliance with this condition to Social Work England within 14 days from the date these conditions take effect.

18. You must permit Social Work England to disclose the above conditions, 1 to 18, to any person requesting information about your registration status.

Social Work England submissions:

18. Social Work England in its written submissions stated:

“Subject to any further evidence of CPD, insight or remediation submitted prior to or at the review hearing Social Work England invite the Panel to impose a Removal Order. The Social Worker has not worked in a social work role since the Final Hearing, although the correspondence indicates that he did initially seek to return to social work but has been unable to do so. As such many of the Conditions have not come into effect and the Social Worker has been unable to formulate a PDP with a supervisor. The Social Worker has not provided evidence that he has completed the required CPD (Condition 16) or produced their own evidence of remediation or reflection. On 30 August 2022, the Social Worker indicated that he does not wish to be employed or registered as a social worker.

The Social Worker was informed in the submissions made at the previous review hearing that a Removal Order would be sought if no evidence of remediation was provided at the next review hearing. No such evidence has yet been provided, and Social Work England therefore submit that the Social Worker cannot currently demonstrate that he has remediated his failings and that his fitness to practise is no longer impaired. Accordingly, the Panel are invited to find that the Social Worker’s fitness to practise remains impaired and to impose a Removal Order.”

Social Worker submissions:

19. The only submissions Mr Foote provided were those referred to in paragraph 9a above.

Panel decision and reasons on current impairment:

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

- The Final Hearing decision;

- The First Review Panel decision;
- Email correspondence between Capsticks LLP and Mr Foote dated 30 August 2022.

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

- i. The purpose of the review is to consider current impairment based on the factual findings, the first panel review, the extent to which Mr Foote has engaged with the regulatory process, the scope and level of his insight, and the risk of repetition.
- ii. The persuasive burden is on Mr Foote.
- iii. In terms of whether the regulatory concerns have been sufficiently, and appropriately remediated, relevant factors include whether Mr Foote:
 - fully appreciates the gravity of the findings of impairment;
 - has kept his skills and knowledge up to date;
 - is likely to place service users at risk if he were to return to unrestricted practise.
- iv. The panel should take into account information relating to Mr Foote's ability to practise safely and effectively and the wider public interest which includes promoting and maintaining proper professional standards of behaviour and promoting and maintaining public confidence in the profession.
- v. It is only if the panel determine that Mr Foote's fitness to practise remains impaired, that it should go on to consider what, if any, sanction to impose by applying the guidance as set out in the Sanctions Guidance (SG) and the principles of proportionality which require Mr Foote's interests to be balanced against the interests of the public.

22. As a consequence of Mr Foote's non-attendance and in the absence of written submissions on the issue of insight and remediation, there was no evidence before the panel that he had acquired a deeper understanding of the seriousness of the regulatory concerns or the impact of his conduct and behaviour on the safety and well-being of service users. The panel noted that Mr Foote has not practised as a social worker since October 2017. In the absence of any positive evidence of insight and remediation, the panel concluded that there has been no material change in circumstances, since the first review on 7 July 2022. Therefore, there remains a risk of harm to service users and a risk of repetition.

23. The panel noted that a significant aspect of the public component is promoting and maintaining public confidence and promoting and maintaining proper professional standards for social workers. Members of the public would be extremely concerned if a social worker

was permitted to resume unrestricted practise in circumstances where findings of misconduct which led to a conditions of practice order had not been remediated. The panel concluded that, in these circumstances, a determination that Mr Foote's fitness to practise is no longer impaired would seriously undermine public trust and confidence in the profession and Social Work England as a professional regulator.

24. Therefore, the panel concluded that Mr Foote's fitness to practise remains impaired.

25. The panel went on to consider what sanction, if any, to impose.

Decision and reasons on sanction:

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

No Action

27. The panel first considered taking no action. The panel concluded that, in view of the nature and seriousness of the findings of misconduct which have not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action on his registration. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

28. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Foote's ability to practise and is therefore not appropriate where, as in this case, there is a current risk to public safety. In any event, the concerns regarding Mr Foote's practise had the potential to have adverse consequences for service users and therefore some restriction on his practise is required. Therefore, the panel concluded that issuing advice or a warning would be inappropriate and insufficient to meet the public interest.

Conditions of Practice Order

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

30. However, Mr Foote is currently subject to conditions. The panel noted that Mr Foote has chosen not to attend this review hearing and has not provided any written reflections which demonstrate insight with regard to the risk to the public and the wider public interest. The

panel noted that as Mr Foote has not secured employment as social worker many of the conditions have not come into effect and he has been unable to formulate a PDP with a supervisor. However, the panel also noted that Mr Foote has not complied with condition 16 which is not dependent on him working in a social work setting. It appears that Mr Foote has been unable to secure work as a social worker and he attributes this to the fact that he is subject to conditional registration. This seems to have contributed to his decision to permanently cease practising as a social worker.

31. The panel took the view that Mr Foote is either unwilling or unable to remediate the regulatory concerns and, in these circumstances, the panel had no confidence that he would comply with an extended conditions of practice order. Conditions are appropriate if a social worker is willing to comply and has the ability to demonstrate current fitness to practise, neither of which have been demonstrated by Mr Foote.
32. Therefore, the panel concluded that a conditions of practice order was no longer appropriate or workable.

Suspension Order

33. The panel, having determined that an extension of the current conditions of practice order would not be appropriate went on to consider whether to impose a suspension order. The panel noted that a suspension order would reaffirm to Mr Foote, the profession, and the public the standards expected of a registered social worker. It would also prevent Mr Foote from practising during the suspension period, which would therefore protect the public and the wider public interest. In addition, a suspension order would provide Mr Foote with the opportunity to develop insight and take active steps to remedy the regulatory concerns.
34. However, there is no evidence before the panel that, during the previous 6 months, Mr Foote has taken advantage of the further opportunity he has been given to demonstrate a commitment to a return to practice and there is no indication that he will do so in the future. In these circumstances, the panel concluded that imposing a suspension order would be an inappropriate use of the valuable resources of time and costs and there was no evidence before the panel that it would be in Mr Foote's interests.

Removal Order

35. The panel determined that a removal order should be imposed on expiry of the current conditions of practice order. In reaching this conclusion the panel took into account paragraph 98 of the SG which states:

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

36. The panel took the view that the above paragraph applies to the circumstances of this case. The panel determined that there was no information available to indicate that Mr Foote was willing to address the findings of misconduct and the impact on his personal reputation and his profession as a whole. Nor was there any evidence before the panel that the risk of repetition and the risk to service users has been reduced. Mr Foote has failed to take advantage of the opportunity to demonstrate that he is fit to return to the register unrestricted and there is no indication that giving him more time would make any difference. In these circumstances, the panel concluded that imposing a suspension order would serve no useful purpose.
37. In reaching this conclusion, the panel took the view that there was no public interest in maintaining Mr Foote's name on the Register and subjecting him to a further review, particularly as he appears to have completely disengaged from these proceedings and has made it clear on more than one occasion that he has no future intention of practising as a social worker. The Panel also concluded that Mr Foote's repeated failure to address the serious concerns that have been identified, the absence of insight and his inability or unwillingness to engage with these proceedings is fundamentally incompatible with continued registration. With regret, the panel concluded that removal from the register is the only means to protect service users and the wider public interest.
38. Therefore, the panel concluded that no sanction lower than a removal order would be sufficient to protect the public and the wider public interest.

Right of Appeal:

39. Under Paragraph 16(1)(b) of Schedule 2 of The Social Workers Regulations 2018 (as amended), 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.
40. Under Paragraph 16(2) of Schedule 2 of The Social Workers Regulations 2018 (as amended) an appeal must be filed before the end of the period of 28 days beginning with the day after the day on which the social worker is notified of the decision complained of.
41. Under Paragraph 15(1A) of Schedule 2 of The Social Workers Regulations 2018 (as amended), where a social worker appeals against a decision made under sub-paragraph (1), the decision

being appealed takes effect from the date specified in that sub-paragraph notwithstanding any appeal against that decision.

42. This notice is served in accordance with Rules 44 and 45 of the Fitness to Practise Rules 2019 (as amended).

Review of final orders

43. Under regulation 15(1), 15(2) and 15(3) of Schedule 2 of The Social Workers Regulations 2018 (as amended):

- 15(1) The regulator must review a suspension order, or a conditions of practice order, before its expiry.
- 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).

44. Under Rule 16(aa) of the Fitness to Practise Rules 2019 (as amended), a 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.

The Professional Standards Authority

45. Please note that in accordance with section 29 of the National Health Service Reform and Health Care Professions Act 2002, a review decision made by Social Work England's panel of adjudicators can be referred by the Professional Standards Authority ("the PSA") to the high court. The PSA can refer this decision to the High Court if it considers that the decision is not sufficient for the protection of the public. Further information about PSA appeals can be found on their website at:

<https://www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/decisions-about-practitioners>