

Social worker: Michael Daniel
Fascione
Registration number: SW123324
Fitness to Practise
Final Order Early Review Hearing

Date of Hearing:	Tuesday 14 March 2023
Hearing venue:	Remote hearing
Final order being reviewed:	Conditions of practice order
Hearing Outcome:	Removal order

Introduction and attendees:

1. This is an early review of a final conditions of practice order under paragraph 15(2) of schedule 2 of The Social Workers Regulations 2018 (as amended) (“the regulations”) originally imposed for a period of 24 months by a panel of adjudicators on 18 March 2022.
2. Mr Fascione did not attend and was not represented. The panel noted that Mr Fascione now wishes to be called Daniel Fascione but also noted that he has not altered his name on the Social Work England register.
3. Social Work England was represented by Ms Louise Ravenscroft, case presenter instructed by Capsticks LLP.

Adjudicators	Role
Debbie Hill	Chair
Beverley Blythe	Social worker adjudicator

Hearings team/Legal adviser	Role
Robyn Watts	Hearings officer
Mollie Roe	Hearings support officer
David Mason	Legal adviser

Service of notice:

4. Mr Fascione did not attend and was not represented. The panel of adjudicators (hereafter “the panel”) was informed by Ms Ravenscroft that notice of this hearing was sent to Mr Fascione by email on 13 February 2023 to an email address provided by Mr Fascione. Ms Ravenscroft submitted that the notice of this hearing had been duly served. She referred to an email from Mr Fascione dated 13 March 2023 in which he said that he did not intend to attend the hearing. Ms Ravenscroft submitted that this demonstrated that Mr Fascione had received notification of the hearing.
5. The panel of adjudicators had careful regard to the documents contained in the final order review service bundle as follows:
 - A copy of the notice of the final hearing dated 13 February 2023 and addressed to Mr Fascione at an email address which he had previously provided to Social Work England;

- An extract from the Social Work England Register detailing Mr Fascione's email address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 14 February 2023 the writer sent by email to Mr Fascione 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. He advised that the duty upon Social Work England was to prove that the notice was sent to, not that it had been received by Mr Fascione.
 7. Having had regard to Rule 44 and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Mr Fascione in accordance with Rule 44.

Proceeding in the absence of the social worker:

8. The panel heard the submissions of Ms Ravenscroft on behalf of Social Work England. Ms Ravenscroft submitted that notice of this hearing had been duly served, no application for an adjournment had been made by Mr Fascione, and as such there was no guarantee that adjourning today's proceedings would secure his attendance. The panel was referred by Ms Ravenscroft to the cases of *Jones [2003] UKPC 1* and *General Medical Council v Adeogba [2016] EWCA Civ 162*. Ms Ravenscroft drew the panel's attention to an email from Mr Fascione dated 13 March 2023. In this email Mr Fascione stated that he would not be attending the hearing and submitted that he had voluntarily absented himself from the hearing. She therefore invited the panel to proceed in the interests of justice and the expeditious disposal of this hearing.
9. 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 Rule 43 of the Rules and the cases of *Jones* and *General Medical Council v Adeogba*. The legal adviser advised that in considering whether to proceed in the absence of Mr Fascione it should proceed with great care and caution and should consider whether a fair hearing could take place in his absence. He further advised that the panel should take into account the public interest in the fair and expeditious disposal of cases. The panel took into account Social Work England's guidance 'Service of notices and proceeding in the absence of the social worker'.
10. The panel considered all of the information before it, together with the submissions made by Ms Ravenscroft on behalf of Social Work England. The panel was satisfied that Mr Fascione had been sent notice of today's hearing and having considered his email of 13 March 2023, that he knew of the hearing and had decided not to attend. It noted the earlier correspondence from Mr Fascione indicated that he did not intend to work as a social worker again and would be seeking voluntary removal from the social work register. The panel, therefore, concluded that Mr Fascione had chosen voluntarily to absent himself from

the hearing. The panel had no reason to believe that an adjournment would result in his attendance.

11. Having weighed the interests of Mr Fascione regarding 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 Fascione's absence.

Review of the current order:

12. This early final order review hearing is taking place under Paragraph 15(2) of Schedule 2 of The Social Workers Regulations 2018 (as amended) and Social Work England's Fitness to Practise Rules 2019 (as amended).
13. Under paragraphs 15(2)(a) to (f), the regulator may review a final order early 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, and may—
 - confirm the order
 - extend, or further extend, the period for which the order has effect, provided that the extended period does not exceed in the case of conditions of practice order, three years
 - reduce the period for which the order has effect
 - substitute any order which the adjudicators or the case examiners could have made on the date on which they made the order
 - revoke the order, and in the case of a suspension order may make the revocation subject to the social worker satisfying such requirements as to additional education or training and experience as apply to them
 - revoke or vary any condition imposed by the order

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

While working as a social worker for Brighton and Hove City Council, between 2019 and 2020, you:

(1) Did not safeguard adults in need of care or support (as set out in Schedule A), in that you:

(a) Did not manage competing priorities in your work

Schedule A

- i) Person I, did not complete a triage request;*
- ii) Person J, did not complete a triage request;*
- iii) Person K, did not complete a triage request*
- iv) Person D, did not act appropriately in relation to the visit and/or took approximately seven months to complete and sign off a Mental Capacity Assessment;*
- v) Person F, took approximately three months to complete and record a Care Act Assessment;*
- vi) Person A, did not convene a professionals meeting within 2 weeks of the MARAC on 17 October 2019 and/or failed make contact with her until 22 January 2020;*
- vii) Person B, took approximately 12 weeks complete a Safeguarding Decision Making tool and/or incorrectly determined that he was not at risk of abuse or neglect;*
- viii) Person C, did not complete a Care Act Review;*
- ix) Person E did not endeavour to resolve the concerns regarding their financial affairs.*
- x) Person G, did not complete a Safeguarding Enquiry Form;*
- xi) Person L did not complete the Safeguarding Decision Support tool until after their death and/or incorrectly determined that he was not at risk of harm.*

(b) Did not recognise/respond to risk and/or progress safeguarding actions in a timely manner or at all.

Schedule A

- i) Person I, did not complete a triage request;*
- ii) Person J, did not complete a triage request;*
- iii) Person K, did not complete a triage request*
- iv) Person D, did not act appropriately in relation to the visit and/or took approximately seven months to complete and sign off a Mental Capacity Assessment;*
- v) Person F, took approximately three months to complete and record a Care Act Assessment;*
- vi) Person A, did not convene a professionals meeting within 2 weeks of the MARAC on 17 October 2019 and/or failed make contact with her until 22 January 2020;*
- vii) Person B, took approximately 12 weeks complete a Safeguarding Decision Making tool and/or incorrectly determined that he was not at risk of abuse or neglect;*

- viii) Person C, did not complete a Care Act Review;
- ix) Person E did not endeavour to resolve the concerns regarding their financial affairs.
- x) Person G, did not complete a Safeguarding Enquiry Form;
- xi) Person L did not complete the Safeguarding Decision Support tool until after their death and/or incorrectly determined that he was not at risk of harm.

The final hearing panel on 18 March 2022 determined the following with regard to impairment

14. *“The panel considered that the misconduct was capable of being remedied but not necessarily without difficulties. The panel noted that Mr Fascione had provided very little information to demonstrate any meaningful insight into the matters complained of and had not expressed any remorse. His last written representations were to deny responsibility for matters complained of. The panel further noted that Mr Fascione had not provided any evidence of remediation, reflection, or an understanding of the risks of not acting swiftly and appropriately when dealing with vulnerable service users. So far as the public component of impairment was concerned Mr Fascione had done nothing to reassure the panel with regard to remediation and had provided no evidence that he had taken steps to improve his practice. The panel considered that on the basis of the whole of the evidence before it and the representations made, that Mr Fascione was currently at risk of putting service users at the unwarranted risk of harm, breaching fundamental tenets of the social work profession, and bringing the social work profession into disrepute. The panel noted that the wider public interest includes the need to promote and maintain public confidence in social workers in England and the need to promote and maintain proper professional standards for social workers. The panel concluded that Mr Fascione’s fitness to practise is currently impaired in relation to both the personal and public aspects.”*

The final hearing panel determined the following with regard to sanction:

15. *“The panel determined that a conditions of practice order was the appropriate sanction in this case. In forming this view, the panel had regard to the fact that Mr Fascione had engaged in the fitness to practise process, albeit he had not attended the hearing. Further, the panel considered that conditions of practice could be drafted which would address the concerns that the panel had identified surrounding risk assessment, personal time management and safeguarding service users. The panel was therefore satisfied that a conditions of practice order would afford sufficient public protection for the risks identified by the panel and would also address the public’s confidence in the regulator and the wider profession.”*

16. *“The panel did consider as suggested in the sanctions guidance as to whether a suspension order was the appropriate sanction but decided that in this case that it would be disproportionate as a conditions of practice order could manage the risks identified by the panel.”*
17. *“The panel noted that Social Work England’s submission in respect of the duration of the conditions of practice order was that of two years. The panel considered this submission prudent and that it was the appropriate period of time for Mr Fascione’s conditions of practice order. In forming this view, the panel considered that two years would provide Mr Fascione with a focused period of time to reflect on the panel’s findings; to re-engage with the regulatory proceedings; to demonstrate some insight and learning; provide him with a period of time to remedy his failings; and/or to state whether he wished to remain a member of the social work profession prior to a reviewing panel considering his case again. Having regard to all of the above the panel was satisfied that a two-year conditions of practice order would protect the public and would also uphold the wider public interest in the following terms.”*

Conditions:

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 you and approved by Social Work England. The reporter must be on Social Work England’s register.*
b) You must not start/ restart work until these arrangements have been approved by Social Work England.
4. *You must provide reports from your reporter to Social Work England every 4 months and at least 28 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 providing social work services, which require you to be registered with Social Work England, you must work with your workplace supervisor and/or reporter, to formulate a personal*

development plan, specifically designed to address the shortfalls in the following areas of your practice:

- *Risk assessment*
- *Safeguarding service users*
- *Time management and understanding priorities*

b) You must provide a copy of your personal development plan to Social Work England within 28 days from the date you start/ restart such a role as outlined at condition 9(a), and an updated copy 28 days prior to any review.

10. *a) You must undertake at least 10 hours of CPD in relation to the following:*

- *Risk assessment*
- *Safeguarding service users*
- *Time management and understanding priorities*

b) You must provide evidence of CPD undertaken to Social Work England within 9 months of these conditions taking effect.

11. *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 close supervision of a workplace supervisor nominated by you and agreed by Social Work England. The workplace supervisor must be on Social Work England's register. The workplace supervisor may be the same person as the reporter.*

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

- 12. You must provide reports from your workplace supervisor to Social Work England every 4 months and at least 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.*
- 13. You must not be responsible for the work of any other social worker or student social worker.*
- 14. You must not undertake any agency or locum posts of less than 6 months duration.*
- 15. 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.*
- 16. You must keep your professional commitments under review and limit your social work practice in accordance with your workplace supervisor's advice.*
- 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 (16), above:*
 - a) Any organisation or person employing or contracting with you to undertake social work services whether paid or voluntary.*
 - b) 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).*
 - c) 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).*
 - d) 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.*

You must forward written evidence of your compliance with these conditions 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 (17), to any person requesting information about your registration status.*

Social Work England submissions

18. The panel heard submissions from Ms Ravenscroft as to the background and the previous panel's findings in relation to impairment and sanction. She submitted that the panel should first consider whether Mr Fascione's fitness to practise remained impaired. Ms Ravenscroft submitted that it remained impaired. She drew the attention of the panel to the findings of the previous panel. Ms Ravenscroft said that the panel had concluded that Mr Fascione's deficiencies could be remedied with difficulty, despite being serious and wide ranging. Ms Ravenscroft drew the panel's attention to the findings of the previous panel that Mr Fascione had shown no remorse, insight or made any attempt at remediation. She said that the earlier panel had found that Mr Fascione posed a risk to the public and to the public interest in maintaining confidence in the profession. Ms Ravenscroft submitted that Mr Fascione had not shown any attempt to remedy his deficiencies and had indicated to Social Work England in an email of 20 December 2022 that he would not be completing the CPD requirement, which was the subject of condition 10 of the conditions imposed by the earlier panel. This followed from reminders from Social Work England in December 2022 reminding him that the requirement to complete his CPD had not been complied with.
19. Ms Ravenscroft submitted that Mr Fascione's fitness to practise remained impaired and invited the panel to consider the new evidence which had emerged since the conditions of practice order was imposed on him. She referred to the clear intention set out in his email of 20 December 2022 by Mr Fascione that he did not intend to comply with the requirement of the conditions to which he was subject. Ms Ravenscroft referred to the advice given to Mr Fascione by Social Work England in January 2023 over him applying for voluntary removal from the register. This she said followed from his stated wish not to continue to be on the social work register. Ms Ravenscroft referred the panel to Mr Fascione's email of 4 January 2023 to Social Work England where he said *'I will not be completing this CPD, and no longer wish to be registered as a social worker, therefore, please remove me from the register. I am not working as a social worker and do not intend to seek employment as a social worker in future. Please let me know if any of this is unclear or you require any additional information.'*
20. Ms Ravenscroft submitted that the conditions of practice order was now not workable or appropriate and that the situation was unlikely to change. She invited the panel to direct Mr Fascione's removal from the register of social workers, following the new evidence available to this panel which had not been available to the previous panel.

Legal Advice:

21. The legal adviser advised that the panel would first have to decide whether Mr Fascione's fitness to practise remained impaired. He advised that in doing so it would have to consider what had occurred since the decision of a previous panel that it was still currently impaired. The legal adviser advised that the panel would have to consider what steps, if any, Mr Fascione had taken to remedy the issues in his practice identified by the earlier panel which had led to its finding of impairment. He referred the panel to the following passage in the case of *Cohen v GMC* [2008] EWHC 581 (Admin):

- *65 It must be highly relevant in determining if...fitness to practise is impaired that first [the] conduct which led to the charge is easily remediable, second that it has been remedied, and third that it is highly unlikely to be repeated.*

22. The legal adviser advised that if the panel found that Mr Fascione's fitness to practise remained impaired, it would have to consider whether there was new evidence upon which the panel could under the rules carry out an early review of the final order. He highlighted that the meaning of 'new evidence' is not defined in the rules and regulations but Social Work England's 'Early Review Guidance' does explore the meaning of the term stating that new evidence:

- *"Must raise a realistic prospect that the order originally imposed is no longer appropriate or proportionate to address those concerns. It must be genuinely new evidence, which was not and could not have been made available to the decision makers when they imposed the order;"*
- *"New evidence almost certainly will be about events which have happened since the order was imposed;" and that*
- *"The new evidence must be verifiable."*

23. The legal adviser advised that the panel would have to consider whether an order of removal from the register was appropriate and proportionate, taking into account Social Work England's guidance on sanctions and removal from the register. He advised that the panel could substitute for the present order any order as to sanction open to the panel which originally imposed the order.

Panel decision and reasons on current impairment

24. 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. The panel also took into account Social Work England's 'Impairment and sanctions guidance'.

25. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and any new documentation provided by Social Work England. The panel took account of the submissions made by Ms Ravenscroft on behalf of Social Work England.

26. 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.

27. The panel first considered whether Mr Fascione's fitness to practise remains impaired. The panel noted that Mr Fascione had taken no steps since the conditions of practice order was

imposed upon him to demonstrate insight or remorse or to remedy the deficiencies in his practice. It took into account his clearly stated intention not to comply with a requirement of the conditions of practice order to complete ten hours of CPD within nine months of the order coming into effect. The panel was satisfied that Mr Fascione's fitness to practise remains impaired and that there had been a change of circumstances since the original hearing whereby Mr Fascione had now clearly stated that he would not comply with the order of that panel and had no intention of working as a social worker again and expressed a clear wish not to remain on the register.

Panel decision and reasons on sanction:

28. Having found Mr Fascione'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 documentary information and accepted the advice of the legal adviser.
29. The panel considered the submissions made by Ms Ravenscroft, on behalf of Social Work England, during which she invited the panel to consider imposing a removal order. The panel also took into account the 'Impairment and sanctions guidance' published by Social Work England.
30. The panel was mindful that the purpose of any sanction is not to punish Mr Fascione, 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 upholding proper standards of conduct and behaviour. The panel applied the principle of proportionality by weighing Mr Fascione's interests with the public interest.
31. The panel found that Mr Fascione had no intention of complying with the conditions imposed upon him or of returning to social work. It was clear to the panel therefore that the present order of conditional registration was unworkable and inappropriate. The panel took account of the need to protect the public and the public interest. It considered whether an order suspending Mr Fascione from the register was appropriate and proportionate to meet those requirements. The panel concluded that an order of suspension would only serve to further deskill Mr Fascione, who was in the early stages of his development as a social worker when the events leading to the earlier hearing took place. The panel considered carefully whether it was proportionate to direct Mr Fascione's removal from the register of social workers. It was aware that an order of removal from the register was only appropriate where there was no other course available to the panel to protect the public and the public interest.
32. The panel concluded that it was clear that Mr Fascione did not have any intention of returning to social work or to undertake the steps necessary for him to be able to do so. The panel therefore concluded that a direction removing him from the register was proportionate and the only sanction available to it which would protect the public and the public interest.

Right of appeal

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:

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

33. 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.
34. Under Paragraph 15(2A) of Schedule 2 of The Social Workers Regulations 2018 (as amended), the decision of a review under sub-paragraph (2) takes effect from the date on which the regulator completes the review notwithstanding any appeal against that decision.
35. This notice is served in accordance with Rules 44 and 45 of the Fitness to Practise Rules 2019 (as amended).

Review of final orders:

36. 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).
37. 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

38. 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>