

Social worker: Daniel O'Brien
Registration number: SW118485
Fitness to practise: Final hearing

Date of hearing: 28 June 2023 to 29 June 2023

Hearing Venue: Social Work England remote hearing

Hearing outcome: Removal order

Interim order: Interim suspension order (18 months)

Introduction and attendees

1. This is a final hearing held under Part 5 of The Social Workers Regulations 2018 (“the Regulations”).
2. Mr O’Brien did not attend the hearing and was not represented.
3. Social Work England was represented by Mr Kirke, counsel instructed by Capsticks LLP.

Adjudicators	Role
Andrew Skelton	Chair
Jacqueline Telfer	Social Worker Adjudicator
Moriam Bartlett	Lay Adjudicator

Alicia Whitehouse	Hearings Officer
Gabriella Berettoni	Hearing Support Officer
Sean Hammond	Legal Adviser

Service of Notice:

4. The panel of adjudicators (“the panel”) was informed by Mr Kirke that notice of this hearing was sent to Mr O’Brien on 26 May 2023 by Royal Mail special delivery to his registered address as it appears on the Social Work England Register. Mr Kirke further informed the panel that notice of this hearing was sent by electronic mail (“email”) on 26 May 2023 to the email address provided by Mr O’Brien to Social Work England. Mr Kirke submitted that notice of this hearing had been duly served in accordance with the Social Work England (Fitness to Practise) Rules 2019 (as amended) (“the Rules”).
5. The panel had careful regard to the documents contained in the final hearing service bundle as follows:
 - A copy of the notice of final hearing dated 26 May 2023 and addressed to Mr O’Brien at his address as it appears on the Social Work England Register;
 - An extract from the Social Work England Register showing Mr O’Brien’s registered address and the email address that he has provided to Social Work England;
 - A copy of a signed Statement of Service, on behalf of Social Work England, confirming that on 26 May 2023 the writer sent the notice of hearing and related

documents by Royal Mail special delivery to Mr O'Brien's registered address and to the email address he has provided to Social Work England;

- A copy of the Royal Mail Track and Trace Document indicating "signed for" delivery to Mr O'Brien's registered address at 12.36 pm on 27 May 2023.

6. The panel accepted the advice of the legal adviser in relation to service of notice.
7. Having had regard to Rules 14, 15, 44 and 45 of the Rules and to 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 O'Brien in accordance with Rules.

Proceeding in the absence of the social worker:

8. Mr Kirke invited the panel to exercise its discretion to proceed with the hearing in the absence of Mr O'Brien.
9. Mr Kirke referred the panel to the Social Worker's Response bundle and in particular the Hearing Attendance form completed by Mr O'Brien, which stated that he did not intend to attend the final hearing and that he would not be represented.
10. Mr Kirke submitted that it was clear that Mr O'Brien has waived his right to attend the hearing and has voluntarily absented himself. Mr Kirke submitted that Mr O'Brien had not requested an adjournment and that it was extremely unlikely that an adjournment would result in his attendance.
11. Mr Kirke acknowledged that there may be some disadvantage to Mr O'Brien if the panel was to proceed in his absence, however, he submitted that this was mitigated by the fact that he had provided written submissions for the consideration of the panel.
12. Mr Kirke submitted that the allegations against Mr O'Brien are extremely serious. He informed the panel that the criminal proceedings against Mr O'Brien were concluded in December 2021 and submitted that it was in the public interest to proceed with the expeditious disposal of this hearing.
13. The panel accepted the advice of the legal adviser. This included reference to Rule 43 of the Rules and the cases of R v Jones [2002] UKHL 5 and General Medical Council v Adeogba [2016] EWCA Civ 162. The panel also took into account Social Work England's guidance in relation to 'Service of notices and proceeding in the absence of the social worker'.
14. The panel considered all of the information before it, together with the submissions made by Mr Kirke.
15. The panel was satisfied that Mr O'Brien was aware of today's hearing and that he was given sufficient notice of it. The panel was satisfied that Mr O'Brien has waived his right to attend the hearing and/or be represented and has voluntarily absented himself. The panel noted that there has been no application for an adjournment and in the circumstances, the panel was satisfied that an adjournment was extremely unlikely to

result in Mr O'Brien's attendance on a future occasion. The panel was mindful that there may be some disadvantage to Mr O'Brien if it exercises its discretion to proceed in his absence. However, the panel noted that Mr O'Brien has engaged in this process and although he has chosen not to attend today, he has provided written submissions for the consideration of the panel.

16. Having weighed the interests of Mr O'Brien in regard to his attendance at the hearing with those of Social Work England and the public interest in an expeditious disposal of this matter, the panel decided that it would be fair to proceed in Mr O'Brien's absence in accordance with Rule 43 of the Rules.

Preliminary matters:

Application for the hearing to be held in private

17. In an email dated 24 May 2023, Mr O'Brien stated that his family have suffered greatly as a result of the adverse publicity generated by these allegations. He therefore requested that the hearing be held in private to minimise any further harm to them.
18. Mr Kirke objected to the application. He referred the panel to Rules 37 and 38 of the Rules. Mr Kirke submitted that although O'Brien's family members were not participants in these proceedings, when considering the public interest, the panel would need to balance their interests against Social Work England's over-arching objective.
19. Mr Kirke referred the panel to an email from Social Work England to Mr O'Brien dated 6 June 2023, which stated:

"...We would be grateful if you could please provide the following information:

1. clearly describe the impact publishing the above information would have on you or others, including any harm, hardship or prejudice you may suffer; and

2. evidence of any harm, hardship or prejudice you believe you or others will suffer. This could be by way of a letter from your GP or other healthcare professional providing further information about the potential risks to you or others if information about the fitness to practise hearing is made public..."

20. Mr Kirke informed the panel that Mr O'Brien had not provided any information to Social Work England following this request.
21. Mr Kirke further submitted that the matters that would be referred to during this hearing were already in the public domain as a result of the criminal proceedings in the Crown Court.
22. He Kirke submitted that on balance, the public interest in these serious matters being considered and heard in a public hearing outweighed the interests of Mr O'Brien's family members.
23. The panel accepted the advice of the legal adviser.

24. In reaching this decision, the panel took into account the fact that no information that was not already in the public domain as a result of the criminal proceedings in the Crown Court would be disclosed or referred to during this hearing.
25. The panel also noted that Mr O'Brien did not provide the information requested by Social Work England in the email dated 6 June 2023. In the circumstances, although the panel was sympathetic to the submission made by Mr O'Brien, it had no information or evidence of the harm suffered by his family members.
26. Having regard to all of the information before it, the panel was satisfied that the public interest in these serious allegations being considered in a public hearing outweighed the interests of Mr O'Brien's family members.
27. The panel therefore decided to refuse Mr O'Brien's application for the hearing to be held in private.

Allegations:

28. The allegations arising out of the regulatory concerns referred to a final hearing by the Case Examiners on 25 August 2022 are as follows:
 1. *Whilst registered as a social worker on or around 15 December 2021, you were convicted at the Crown Court at Bolton of the following offences:*
 - 1.1. *Making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978;*
 - 1.2. *Making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978;;*
 - 1.3. *Making indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978;*
 - 1.4. *Possess extreme pornographic images-act of intercourse/oral sex with a dead/alive animal, contrary to section 63(1) of the Criminal Justice and Immigration Act 2008;*
 - 1.5. *Possess prohibited images of children, contrary to s62(1) of the Coroners and Justice Act 2009;*
 - 1.6. *Distribute an indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(b) of the Protection of Children Act 1978;*
 - 1.7. *Distribute an indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(b) of the Protection of Children Act 1978;*

1.8. Distribute an indecent photograph/pseudo-photograph of a child, contrary to section 1(1)(b) of the Protection of Children Act 1978.

The matter outlined in Allegation 1.1 to 1.8 amount to the statutory ground of conviction in the United Kingdom for a criminal offence.

Your fitness to practise is impaired by reason of your convictions.

Background:

29. On 1 May 2020, Social Work England received a referral from the Service Manager and Principal Social Worker at Wigan Council ("the Council"), regarding Mr O'Brien. At the time of the referral the Social Worker was working as an Adult social worker at the Council. The referral reported that the Council had been contacted by Greater Manchester Police, who informed them that Mr O'Brien was in custody and had been charged with criminal offences relating to making and distributing indecent images of children, possessing extreme pornographic images, and possessing prohibited images of children.
30. Social Work England liaised with the National Crime Agency ("NCA"). The NCA provided a copy of a case summary referred to as an MG5 Report.
31. That MG5 stated that on 30 March 2020, Mr O'Brien posted a message to another account holder using an online messaging application called "Wickr". That recipient suggested that she was the mother of two daughters, aged eight and six years old. However, in reality, that account holder was an undercover police officer.
32. The NCA obtained screenshots of messages sent by Mr O'Brien to the account holder between 30 March 2020 and 24 April 2020. In these messages, Mr O'Brien described to the mother in graphic terms various acts of sexual abuse, including rape, that he wanted to inflict on her two young daughters. Within those messages, Mr O'Brien sent a total of 25 indecent images of children to the other account holder.
33. The MG5 Report states that Mr O'Brien was also captured using 'the 'KIK' application, between 11 April 2020 and 27 April 2020 during which the Social Worker engaged in further communications with the undercover police officer. He suggested that they meet at the end of lockdown so that he could engage in the sexual abuse and rape of her two young daughters.
34. On 23 April 2020, Mr O'Brien accessed a 'Dropbox' linked to the undercover officer posing as the children's mother. This allowed the NCA to identify an IP address, which was linked to the family address of Mr O'Brien.

35. On 28 April 2020, NCA Officers attended Mr O'Brien's address and he was arrested for offences of child sexual exploitation and making and distributing indecent images of Children. NCA Officers searched the address and found 11 devices that could be attributed to Mr O'Brien.
36. On these devices, the following material was found and categorised:
- Category A Indecent Images of Child: 1,899;
 - Category B Indecent Images of Child: 3,164;
 - Category C Indecent Images of Child: 37,702;
 - Images of Extreme Pornography: 10; and,
 - Prohibited Images: 15.
37. Across the devices there was evidence of other paedophilic activity including web-browsing history, bookmarks and search history. Mr O'Brien was conveyed to Wigan Police Station and interviewed under caution. Mr O'Brien provided a full account in interview, accepting that he had downloaded the images and that he was sexually attracted to children under the age of 16 years old. In relation to the "Wickr" and "Kik" messages, he stated that these comments related to fantasy roleplay and that the other party bore some responsibility for encouraging him to meet in person. He denied that he had any desire to meet the children being discussed.
38. On 15 December 2021, Mr O'Brien appeared at Bolton Crown Court and pleaded guilty on indictment to eight counts relating to the possession, production, and distribution of indecent images of a child. The case was adjourned for the preparation of a pre-sentence report and psychiatric report.
39. On 25 February 2022, Mr O'Brien appeared at Bolton Crown Court and was sentenced by HHJ Gilbert to:
- Two years imprisonment for Count 6 of the indictment (the most serious count on the indictment relating to the distribution of category A indecent images of children);
 - 12 months imprisonment to run concurrently for each of the other seven counts;
 - Made subject to the notification requirements of the Sex Offenders Register for a period of 10 years from the point of conviction;
 - Made subject to a Sexual Harm Prevention Order for a period of 10 years;
 - Ordered to pay a victim surcharge; and

- Barred from working with children.
40. In his sentencing remarks HHJ Gilbert noted that over a prolonged period of time, Mr O’Brien accessed pornographic images which the Judge described as:
- “...utterly repellent images of children being abused for the sexual pleasure of others: a complete perversion of the innocence of childhood”.*
41. In addition, HHJ Gilbert noted that Mr O’Brien had participated in online chat-rooms and messaging apps, in which he set out in explicit detail the various acts of rape and sexual abuse he would inflict on a young child given the opportunity to do so.
42. On 6 July 2022, Mr O’Brien provided a written response to Social Work England's Case Investigation Report. He accepted the regulatory concerns and that his fitness to practise was impaired.
43. Following the decision of the Case Examiners to refer the regulatory concerns to a final hearing, Mr O’Brien provided a further detailed written response. At the outset he stated:
- “I want to emphasise that in terms of the charges I was brought to court for and admitted guilty to, I must admit my part in these...”*
44. On 14 September 2022, Mr O’Brien provided a further written response in which he stated that all previous material submitted remained the same and that he had nothing further to add. He stated he acknowledged:
- “...that due to my convictions I will never again be able to work as a social worker.”*
45. On 22 March 2023, Mr O’Brien provided a written response in the Case Management Questionnaire. Mr O’Brien stated that from the time of his arrest he has admitted his guilt and explained his serious problem with illegal pornography.
46. On 28 April 2023, Mr O’Brien provided a written response to the Statement of Case in which he accepted all allegations and that his fitness to practice was impaired. Mr O’Brien again apologised to Social Work England for his behaviour. Mr O’Brien stated that he has now been released from prison on licence and was attempting to move forward with his life.

Summary of Evidence:

47. Prior to the commencement of the hearing, the panel was provided with and considered the following:
- Statement of Case (11 pages);
 - Witness Statement Bundle (4 pages);

- Exhibit Bundle (39 pages);
- Social Worker’s Response Bundle (11 pages); and
- Service and Supplementary Bundle (38 pages).

Findings and reasons on facts:

48. The panel noted that the burden of proving the facts was on Social Work England. The allegations could only be found proved if the panel was satisfied on the balance of probabilities.
49. In reaching its decision the panel took into account the content of all of the documentary evidence contained in the witness statement bundle, the exhibit bundle, the social worker’s response bundle and the service and supplementary bundle.
50. The panel had regard to the oral submissions made by Mr Kirke and to the written submissions made by Social Work England contained within the Statement of Case. The panel also had regard to the written submissions from Mr O’Brien.
51. The panel accepted the advice of the legal adviser and had regard to the guidance published by Social Work England.
52. The panel noted that Rule 35A of the Rules provides as follows:

“35A.

(1) Where a registered social worker has been convicted of a criminal offence:

(i) a copy of the certificate or memorandum of conviction, certified by a competent officer of a Court in the United Kingdom or, in Scotland, an extract conviction, shall be conclusive proof of the conviction.

(ii) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(2) The only evidence which may be adduced by the registered social worker in rebuttal of a certificate or memorandum of conviction is evidence for the purpose of proving that said conviction has been quashed, or they are not the person referred to in the certificate or memorandum.

(3) Any other evidence pertaining to the conviction may be considered as sufficient proof of the conviction.”
53. The panel noted that in her witness statement dated 20 March 2023, Ms Verma, an Investigator at Social Work England, exhibited a copy of a Certificate of Conviction from Bolton Crown Court. The panel further noted that a copy of the Certificate of conviction

was produced in the exhibit bundle. The panel was satisfied that the Certificate of Conviction was dated 2 March 2023 and that it was signed by an Officer of the Court. The panel was further satisfied that the Certificate of Conviction related to Mr O'Brien and confirmed that:

- On 15 December 2021, Mr O'Brien pleaded guilty to the eight counts charged on the indictment; and
- On 25 February 2022, Mr O'Brien was sentenced to a total of 2 years imprisonment, made the subject of a 10 year notification requirement in relation to the Sex Offenders' Register, made the subject of a 10 year Sexual Harm Prevention Order, and Barred from working with children.

54. The panel also took into account the admissions made by Mr O'Brien in his written submissions to Social Work England and noted that he has not sought to have the conviction quashed nor as he taken any issue as to its validity.
55. Having regard to all of the above, the panel was satisfied that on 15 December 2021, Mr O'Brien was convicted at the Crown court at Bolton for the offences particularised at paragraphs 1.1 to 1.8 of the allegations.
56. The panel therefore found the allegations proved.

Finding and reasons on grounds

57. The panel heard from Mr Kirke who submitted that the statutory ground of conviction was engaged on the basis that Mr O'Brien has received a conviction in the United Kingdom.
58. The panel noted that in his written submissions, Mr O'Brien accepted his conviction and the underlying facts of the criminal offences to which he pleaded guilty.
59. The panel accepted the advice of the legal adviser.
60. The panel had regard to its findings and reasons at the fact-finding stage of this hearing and was satisfied that the statutory ground of conviction is established.
61. In reaching this decision, the panel was satisfied that Mr O'Brien has breached Social Work England's Professional Standards (2019), in particular standards 5.1 and 5.2:

"As a social worker. I will not:

5.1 - Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

5.2 - Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work."

Finding and reasons on current impairment

62. Having found the statutory ground of conviction engaged, the panel went on to consider whether, as a result of that conviction, Mr O'Brien's fitness to practise is currently impaired.
63. In reaching its decision, the panel was mindful that the question of impairment is a matter for its professional judgement. The panel was required to determine whether Mr O'Brien's fitness to practise is impaired as at today's date.
64. The panel considered all of the evidence provided in the witness statement bundle, the exhibit bundle, the social worker's response bundle and the service and supplementary bundle. The panel had regard to its previous findings at the fact finding and grounds stages of this hearing.
65. The panel heard submissions from Mr Kirke. He referred the panel to and adopted the written submissions contained within the statement of case. Mr Kirke submitted that Mr O'Brien's current fitness to practise is impaired by reason of his conviction on both the personal and public elements of impairment.
66. The panel had regard to the written submissions from Mr O'Brien in which he admitted that his current fitness to practise is impaired as a result of his conviction.
67. The panel also took into account the Impairment and Sanctions Guidance published by Social Work England (December 2022), which outlines the factors to be taken into account when determining impairment.
68. The panel accepted the advice of the legal adviser.
69. The panel noted that impairment has two elements to it, the personal and the public element.
70. In relation to the personal element of impairment, the panel noted that following the judgement in the case of Cohen v GMC (2008) EWHC 581, the three key questions for the panel to determine were:
 - Is Mr O'Brien's misconduct remediable;
 - Has it already been remediated; and
 - Is the misconduct likely to be repeated?
71. The panel was mindful that this is a conviction and not a misconduct case, it therefore applied the court's reasoning in the case of Cohen and considered the following questions:

- Is the conduct which led to Mr O'Brien's conviction remediable;
 - Has it already been remedied; and
 - Is the conduct which led to Mr O'Brien's conviction likely to be repeated?
72. The panel was of the view that the answer to the first of these questions was that the conduct which led to Mr O'Brien's conviction was difficult to remediate given the nature of Mr O'Brien's offending behaviour and his admitted addiction to extreme pornography. The panel noted that at the time of his arrest, over 40,000 indecent, extreme and prohibited images were found on Mr O'Brien's electronic devices and that evidence of other paedophilic activity was discovered in his internet browsing history. The panel also noted that the offending behaviour had occurred over a prolonged period, commencing in 2018.
73. The panel next considered whether Mr O'Brien has remediated the conduct which led to his conviction.
74. The panel noted that in Mr O'Brien's initial response to Social Work England's investigation he provided a detailed background to his addiction to illegal online pornography. The panel further noted that Mr O'Brien has expressed regret and shame for his actions and for perpetuating the industry of child pornography. He stated that, during his 22 months on Police bail, he completed a number of remedial steps, including:
- Completing the Safer Lives Programme (programme which supports people during police investigation);
 - Accessing the Lucy Faithful Foundation helpline;
 - Accessing Cognitive Behaviourist Therapy (CBT) and conducting reading recommended by their CBT practitioner;
 - Self-Help; and
 - Making a full disclosure to his family.
75. The panel also took into account that Mr O'Brien:
- Has shown remorse for his actions;
 - Made admissions when interviewed under caution by the police;
 - Pleaded guilty in the Crown Court; and
 - Has made admissions during Social Work England's investigation of this matter.

76. In the panel's view, the above matters show that Mr O'Brien has demonstrated some insight into his offending behaviour and has taken some steps to remediate. However, given the extent of Mr O'Brien's offending, the panel was not satisfied that Mr O'Brien has fully remediated the conduct which led to his conviction.
77. The panel then turned to the third question posed in the case of Cohen.
78. The panel noted that at the time of his sentence on 25 February 2022, HHJ Gilbert noted that the pre-sentence report assessment of Mr O'Brien was that he was a 'medium risk' of re-offending.
79. The panel also took into account that at the time of his arrest, in addition to being in possession of indecent, extreme and prohibited images, Mr O'Brien was engaging in online chat through messaging applications such as "Wickr" and "Kik" in which he described acts of sexual abuse including rape that he would inflict on children if given the opportunity. In the panel's view, this amounted to an escalation in his behaviour.
80. The panel acknowledged that since his arrest, Mr O'Brien has demonstrated some remorse and taken some steps to remediate the conduct which led to his conviction. However, taking all of the above matters into consideration, the panel determined that there remains a significant risk of the conduct being repeated.
81. The panel next had regard to the test formulated by Dame Janet Smith in her "Fifth Shipman Report" and applied by the High Court in Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant [2011] EWHC 927 (Admin), to the extent relevant to the facts of the case:

"Do our findings of fact in respect of the [social worker's] misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that she/he:

(a) has in the past acted and/or is liable to act in the future so as to put a patient or patients at unwarranted risk of harm; and/or

(b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

(c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

(d) has in the past acted dishonestly and/or is liable to act dishonestly in the future?"

82. The panel was satisfied that Mr O'Brien's conduct has either directly or indirectly facilitated the serious abuse and exploitation of vulnerable children. The panel was further satisfied that Mr O'Brien's conduct has brought the social work profession into disrepute in the eyes of other professionals and the wider public. In the panel's view, Mr

O'Brien's actions were a clear and fundamental breach of core tenets of the social work profession, namely preventing the abuse of vulnerable members of society. Accordingly, the panel was satisfied that limbs (a) to (c) of the test are engaged in this case both in terms of Mr O'Brien's past actions and future behaviour given the risk of repetition identified by the panel.

83. The panel therefore concluded that a finding of current impairment was required on the personal element of impairment.
84. The panel next considered whether a finding of current impairment was also required on the public element of impairment. In so doing, the panel had regard to the following paragraph in Grant, which dealt with wider public interest considerations:

"In determining whether a practitioner's fitness to practice is impaired..., the panel should generally consider not only whether the practitioner constitutes a present risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

85. In the circumstances of this case, the panel was satisfied that a well-informed member of the public would be very concerned if a finding of impairment was not made given the extremely serious and repeated nature of Mr O'Brien's criminal offending behaviour, which resulted in him being sentenced to a term of two years imprisonment, being made the subject of a 10 year notification requirement in relation to the Sex Offenders' Register, and made the subject of a 10 year Sexual Harm Prevention Order. The panel therefore determined that a finding of impairment is necessary in order to maintain public confidence in the social work profession. The panel was further satisfied that a finding of impairment was required to declare and uphold professional standards of conduct. In the panel's view, it is important that it is clear to all social workers and to the wider public that such conduct is not acceptable.
86. The panel therefore found Mr O'Brien's fitness to practise to be currently impaired by reason of his conviction on both the personal and public elements of impairment.

Decision on sanction

87. Having determined that Mr O'Brien's fitness to practise is currently impaired by reason of his conviction, the panel next went on to consider whether it was impaired to such a degree that it required action to be taken on his registration by way of the imposition of a sanction.

88. In reaching its decision on sanction, the panel has again given careful consideration to all of the evidence it has received during this hearing, and to its findings at the fact-finding, grounds and impairment stages.
89. Mr Kirke informed the panel that Mr O'Brien has no previous regulatory findings recorded against him.
90. Mr Kirke submitted that, given the nature and seriousness of the allegations, the appropriate and proportionate sanction in Mr O'Brien's case was a Removal Order.
91. The panel accepted the advice of the legal adviser who referred the panel to the Social Work England Impairment and Sanctions Guidance (December 2022).
92. The panel reminded itself that the purpose of imposing a sanction is not to punish Mr O'Brien. The purpose is to protect the public, to uphold proper professional standards and to maintain public confidence in the social work profession.
93. The panel had regard to the Impairment and Sanctions Guidance and was mindful of the need to ensure that any sanction imposed is both appropriate and proportionate, properly balancing the interests of Mr O'Brien against the need to protect the public, uphold professional standards and maintain public confidence in the profession.
94. The panel noted that it should impose no greater restriction on Mr O'Brien's ability to practise as a social worker than is absolutely necessary to address the public protection and wider public interest concerns identified by the panel.
95. The panel noted that it must therefore consider each of the available sanctions in ascending order before determining the appropriate and proportionate sanction.
96. Before considering the individual options open to it, the panel identified what it considered to be the relevant aggravating and mitigating factors in the case.
97. In relation to aggravating factors the panel identified the following:
 - Mr O'Brien's offending behaviour was not an isolated incident. It occurred over a prolonged period and resulted in his conviction for 8 serious criminal offences. In the panel's view, the underlying facts of those offences demonstrates the extremely serious and egregious nature of Mr O'Brien's offending behaviour;
 - At the time of his arrest, Mr O'Brien was in possession of over 40,000 indecent, extreme and prohibited pornographic images of children. Mr O'Brien also admitted, and was convicted of making and indecent images of children. In the panel's view, Mr O'Brien was therefore involved in the sexual exploitation of those children thereby causing them to suffer harm; and

- The panel has found that there is a significant risk of repetition of the conduct which led to Mr O'Brien's conviction.

98. In respect of mitigating factors, the panel identified the following:

- Mr O'Brien has no previous regulatory findings recorded against him;
- Mr O'Brien has shown remorse for his actions;
- Mr O'Brien made admissions when interviewed under caution by the police and pleaded guilty in the Crown Court;
- Mr O'Brien has engaged with Social Work England's investigation of this matter and has made admissions in the written submissions he provided; and
- Mr O'Brien has demonstrated some insight into his offending behaviour and taken some steps towards remediation (as set out in paragraph 74 of this determination).

99. The panel next considered what, if any sanction it should impose.

No further action

100. The panel first considered whether this was an appropriate case for it to take no further action.

101. The panel was satisfied that Mr O'Brien's disgraceful criminal offending was too serious for this to be an appropriate or proportionate course of action. In the panel's view, it would not protect the public from the risk of harm, nor would it meet the wider public interest concerns identified by the panel.

Advice Order or a Warning Order

102. The panel next considered whether an Advice Order or a Warning Order would be an appropriate sanction. The panel noted that these sanctions would not restrict Mr O'Brien's practice and would therefore not be appropriate given that the panel has found that there is a high risk of repetition of the conduct which led to the conviction and a consequential risk of harm to the public including service users. The panel therefore determined that neither of these sanctions would be appropriate in the circumstances of the case.

Conditions of Practice Order

103. The panel next considered the imposition of a Conditions of Practice Order.

104. The panel had regard to the Impairment and Sanctions Guidance in relation to the imposition of a Conditions of Practice Order.

105. The panel noted that paragraph 118 of the Impairment and Sanctions Guidance states:

“118. Conditions of practice are less likely to be appropriate in cases of character, attitude or behavioural failings. They may also not be appropriate in cases raising wider public interest issues.”

106. Mr O’Brien’s criminal offending occurred outside of his practice as a social worker. However, given the nature and seriousness of his conduct, the panel has found that there is a significant risk of repetition resulting in a consequential risk of harm to the public including service users. Furthermore, the panel noted that Mr O’Brien is currently released on licence as part of the two year sentence of imprisonment imposed on 25 February 2022. Mr O’Brien is also the subject of a 10 year notification requirement in relation to the Sex Offender’s Register and a 10 year Sexual Harm Prevention Order. In addition, he has been barred from working with children by the DBS.

107. The panel therefore concluded that it was not possible to formulate any workable conditions of practice that would address these concerns and provide an adequate level of public protection or meet the wider public interest considerations identified by the panel.

108. The panel therefore concluded that a Condition of Practice Order was not an appropriate or proportionate sanction in the circumstances of this case.

Suspension Order

109. The panel next gave consideration to the imposition of a Suspension Order.

110. The panel noted that a Suspension Order would protect the public to the extent that it would temporarily remove Mr O’Brien from practising as a social worker. The panel also noted that in certain cases, a Suspension Order could address wider public interest concerns. However, the panel was of the view that the circumstances and nature of Mr O’Brien’s criminal offending was so serious that it was fundamentally incompatible with professional registration as a social worker. Mr O’Brien has breached core tenets of the social work profession by exposing vulnerable children to sexual exploitation.

111. The panel took into account paragraph 188 of the Impairment and Sanctions Guidance and the decision in the case of CHRE v Fleishmann and GDC [2005] EWHC 87 (Admin), which provides that that a social worker convicted of a serious offence should not normally be permitted to return to practice while they are still subject to a criminal sentence. Applying that guidance to this case, the panel noted that the operational period of the sentence imposed by HHJ Gilbart on 25 February 2022 is 10 years.

112. Taking all of the above factors into consideration, the panel determined that a Suspension Order would not be the appropriate sanction in this case as it would not be

sufficient to protect the public and meet the wider public interest concerns identified by the panel.

Removal Order

113. The panel therefore went on to consider the imposition of a Removal Order.
114. The panel noted the Impairment and Sanctions Guidance states that a Removal Order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England.
115. In the panel's view, the following bullet point within paragraph 149 of the Impairment and Sanctions Guidance is applicable in Mr O'Brien's case:
- "149. A removal order may be appropriate in cases involving (any of the following):*
- ...
 - *Sexual misconduct*
 - ...
116. The panel also applied the specific guidance provided in relation to sexual misconduct contained in paragraphs 164 to 166 of the Impairment and Sanctions Guidance:
- "164. Convictions for the most serious sexual offences will likely engage regulation 26(5). This will require Social Work England to automatically remove the social worker from the register, without a hearing (see section 'automatic removal'). However, there are still a range of criminal convictions for sexual offences that do not engage automatic removal. In these cases, the decision makers will need to make a decision.*
- 165. Decision makers should always view convictions for sexual offences seriously. This is the case even if the convictions relate to the social worker's private life. This is because sexual offences undermine public confidence in the profession. However, the more serious convictions will be those involving (either of the following):*
- 166. A social worker being involved in taking, making, sharing and/or possessing an indecent image or pseudo-photograph of a child will be considered extremely seriously. Any conviction related to child sexual exploitation material will clearly undermine public confidence in the profession.*
117. The panel acknowledged that a Removal Order will prevent Mr O'Brien from working as a social worker and could therefore have a detrimental effect on his personal and financial interests. The panel took into account the fact that Mr O'Brien does not have

any previous regulatory findings recorded against him. However, the panel was satisfied that on balance, the significant risks to the public and the wider public interest concerns identified in this case are such that they override Mr O'Brien's interests in this regard.

118. The panel therefore decided that a Removal Order was the appropriate and proportionate sanction in this extremely serious case.

Interim order

119. Mr Kirke made an application for an interim order, in case Mr O'Brien exercises his right to appeal to the High Court against the decision of this panel to impose a Removal Order.
120. The panel accepted the advice of the legal adviser who advised the panel that in accordance with Paragraph 11 of Schedule 2 of The Regulations, the panel may only make an interim order if it considers it is necessary for the protection of the public or in the best interests of the Social Worker.
121. For the reasons set out in the substantive decision, the panel was satisfied that there remained an on-going risk to the public, including service users and therefore concluded that an interim order was necessary on the first limb of public protection namely to protect, promote and maintain the health, safety, and well-being of the public.
122. Furthermore, for the reasons set out in its substantive decision the panel was also satisfied that an interim order was necessary in the wider public interest limb of public protection. The panel was satisfied that an ordinary member of the public would be extremely concerned to learn that Mr O'Brien was entitled to practise without restriction if an interim order was not made to cover the statutory appeal period.
123. The panel first considered whether an interim conditions of practice order would be the appropriate and proportionate interim order. However, for the same reasons as set out in its substantive decision, that panel concluded that it was not possible to formulate workable conditions of practice that would adequately protect the public or meet the wider public interest concerns previously identified by the panel.
124. The panel therefore concluded that an interim suspension order was necessary for the protection of the public including the wider public interest.
125. The panel gave consideration to the length of the interim suspension order and concluded that a period of 18 months was appropriate. In the panel's view, this would allow sufficient time for an appeal to be heard by the High Court, if Mr O'Brien were to exercise his right to appeal.
126. The panel therefore decided to impose an interim suspension order for a period of 18 months under paragraph 11(1)(b) of Schedule 2 of The Social Workers Regulations 2018.

127. If there is no appeal against the final order, the interim suspension order will expire when the 28-day period for appealing the final order expires. If there is an appeal against the final order, the interim suspension order will expire when the appeal is withdrawn or otherwise finally disposed of.

Right of Appeal

128. Under paragraph 16(1)(a) of schedule 2, part 5 of the Social Workers Regulations 2018, 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.
129. Under paragraph 16(2) of 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.
130. 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.
131. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.