

Social worker: Barry John Lindsay

Registration number: SW30043

Fitness to Practise

Final Order Review Meeting

Date of meeting: 01 November 2023

Meeting venue: Remote

Final order being reviewed: Suspension order – (expiring 12 December 2023)

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

Introduction and attendees:

1. This is the second review of a final suspension order originally imposed for a period of 12 months by a panel of adjudicators on 16 August 2021 and extended for a period of 15 months on 1 August 2022.
2. Mr Lindsay did not attend and was not represented.
3. Social Work England was represented by Capsticks LLP and their written submissions are set out within the notice of hearing letter.

Adjudicators	Role
Catherine Boyd	Chair
Jill Wells	Social worker adjudicator

Hearings team/Legal adviser	Role
Hannah Granger	Hearings officer
Jo Cooper	Hearings support officer
Helen Gower	Legal adviser

Service of notice:

4. 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 18 September 2023 and addressed to Mr Lindsay at his address which he provided to Social Work England
 - An extract from the Social Work England Register as at 18 September 2023 detailing Mr Lindsay's registered address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 18 September 2023 the writer sent the notice of hearing and related documents to Mr Lindsay by email at the address referred to above.
5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard 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 Lindsay in accordance with Rules 16, 44 and 45 of Social Work England Fitness to Practice Rules 2019 (as amended) (the "Rules").

Proceeding with the final order review as a meeting:

7. The notice of final order review informed Mr Lindsay that the review would take place as a meeting. The notice stated:

“If you would like to attend before the adjudicators in order to make oral submissions, please confirm your intention by no later than 4pm on Tuesday, 3 October 2023. Unless we hear from you to the contrary, we shall assume that you do not want to attend a hearing and Social Work England may decide to deal with the review as a meeting. If Social Work England do hold a meeting, the adjudicators will be provided with a copy of this letter setting out Social Work England’s submissions and a copy of any written submissions you provide.”

8. The panel received no information to suggest that Mr Lindsay had responded to the notice of final order review.
9. The panel heard and accepted the advice of the legal adviser with regard to Rule 16(c) of the Rules which provides:

“Where the registered social worker does not state within the period specified by the regulator whether they intend to attend before the regulator, the regulator may determine whether to make an order by means of a meeting.”

10. The panel also accepted the advice of the legal adviser in relation to the factors it should take into account when considering whether it was appropriate to conduct the review in Mr Lindsay’s absence. This included reference to the cases of *R v Jones [2002] UKHL 5*; *General Medical Council v Adeogba [2016] EWCA Civ 162*. The panel also took into account Social Work England guidance ‘Service of notices and proceeding in the absence of the social worker’.
11. The panel noted that Mr Lindsay did not attend the final hearing, or the last review hearing, and that he has not engaged with Social Work England since the last review. There was some information indicating that the documents that were sent to Mr Lindsay by email regarding this review had been accessed. The panel inferred that Mr Lindsay was aware of the review and had voluntarily absented himself. Mr Lindsay had not requested an adjournment and the panel considered that an adjournment was unlikely to secure his attendance. Although there might be some prejudice to Mr Lindsay, the panel considered that his interests were outweighed by the public interest in the expeditious disposal of the review. The panel was satisfied that it would be fair and appropriate to conduct the review in Mr Lindsay’s absence and in the form of a meeting in accordance with Rule 16(c).

Review of the current order:

12. This final order review hearing is taking place under Paragraph 15(1) of Schedule 2 of The Social Workers Regulations 2018 (as amended) and Social Work England’s Fitness to Practise Rules 2019 (as amended).
13. The current order is due to expire at the end of 12 December 2023.

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

14. The final hearing panel found the following allegations against Mr Lindsay proved:

‘Whilst registered with the Health and Care Professions Council as a Social Worker:

- 1. On 11 October 2017 at Hull Magistrates’ Court, you were convicted of driving a motor vehicle on Melrose Street, Hull after consuming so much alcohol that the proportion of it in your breath, namely 95 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit of alcohol, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988;*
- 2. On or around 4 – 5 September 2017, you transported a service user and colleague to Mill View Court while under the influence of alcohol;*
- 3. The matter set out in particular 2 constitutes misconduct;*
- 4. By reason of your misconduct and conviction as set out in paragraphs 1 – 2, your fitness to practise is impaired.’*

Preliminary Issues:

15. The panel noted that the final Fitness to Practise hearing in August 2021 had been held as a public hearing, and parts of the hearing were heard in private when the evidence related to Mr Lindsay’s health. The panel accepted the advice of the legal adviser and was aware under rule 38 (a) (ii) it may decide to exclude any details of Mr Lindsay’s physical or mental health from the public decision.

The previous final order review panel on 1 August 2022 determined the following with regard to impairment:

“The panel took into account that Mr Lindsay’s conviction was now almost 5 years old and that there was no information to show that he had received any further convictions for driving with excess alcohol or any other offence. The panel considered that the conviction itself, the action taken against Mr Lindsay by the regulator and the regulatory process culminating in the 12 month suspension order imposed by the final hearing panel, was sufficient to satisfy the public interest served by maintaining public confidence in the social work profession and declaring and upholding professional standards and behaviour.

The panel therefore concluded that in light of the above and given the amount of time that has elapsed since the conviction and the absence of any further convictions, Lindsay's fitness to practise was not impaired on the basis of his conviction.

The panel went on to consider the nature of Mr Lindsay's misconduct, which had been extremely serious. He had placed a service user and a colleague at direct risk of harm by driving a car with them as passengers, whilst having consumed excessive alcohol.

The panel took into account that Mr Lindsay has previously expressed remorse and it considered the contents of his email dated 7 October 2021 set out at paragraph 15 above. However, despite the recommendations of the final hearing panel he had not attended today's review, or provided a written reflection or any up-to-date information regarding his circumstances including his physical and mental health. Accordingly this panel had no evidence before it of any developing insight Mr Lindsay might have gained, or any steps taken to address the potential risks his misconduct posed to service users, the general public and the reputation of the social work profession.

The panel therefore concluded that there had not been any significant change since the current suspension order was imposed. It could not be confident that Mr Lindsay had remediated his misconduct and that the risks to the safety of service users and the general public identified by the final hearing panel remain.

The panel also considered that a well-informed member of the public would be concerned if Mr Lindsay were allowed to return to unrestricted practice until the risks identified had been addressed.

The panel therefore decided that, in the absence of any change since the previous review, Mr Lindsay's fitness to practise remains currently impaired on both the personal and public components in relation to his misconduct."

The previous final order review panel on 1 August 2022 determined the following with regard to sanction:

"No Action

The panel considered that the nature and seriousness of Mr Lindsay's fitness to practise impairment has not been fully addressed and that there were no exceptional circumstances identified. It therefore concluded that it would be inappropriate to take no action because this would not protect the public or address the wider public interest.

Advice or Warning

The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Lindsay's ability to practise and were

therefore not appropriate where there is a current risk to public safety. Therefore, the panel concluded that issuing advice or a warning was inappropriate because they would not adequately protect the public or address the wider public interest.

Conditions of Practice Order

The panel went on to consider a conditions of practice order. The panel considered that Mr Lindsay's deficiencies are potentially capable of being remedied. However, it took into account that overall, Mr Lindsay's engagement with the regulatory process had been limited, there had been no communication from him since October 2021 and he had not followed the recommendations of the final hearing panel regarding providing up-to-date information. The panel was not confident that Mr Lindsay had yet reached the stage where he would comply with conditions of practice. The panel therefore concluded that conditions could not be devised that would be workable, realistic and measurable that would provide the necessary level of public protection or address the wider public interest. The panel therefore decided that a conditions of practice order is not appropriate.

Suspension Order

The panel considered that it was possible Mr Lindsay may still wish to engage in the process and take steps that would enable him to return to unrestricted practice. The panel considered that a further period of suspension will enable Mr Lindsay to do this. As the panel did not have any information to suggest Mr Lindsay made any meaningful progress towards remediation since the suspension order was imposed, it was satisfied that a further suspension order of a duration of 15 months would not be disproportionate. It would provide a sufficient period of time to enable Mr Lindsay to engage and take the necessary steps to enable him to return to unrestricted practice.

In reaching this decision, the panel took into account that a suspension order was likely to have an adverse affect on Mr Lindsay's financial and professional circumstances. However, it had to give significant weight to the need to maintain the public interest by protecting the public and maintaining the reputation of the social work profession. It therefore concluded that the public interest and public protection outweighed Mr Lindsay's interests.

This panel cannot bind a future panel. However, a future reviewing panel was highly likely to expect Mr Lindsay to attend the review hearing and to have provided:

- *A written reflection.*
- *Up-to-date information as to his present circumstances, including any paid or unpaid work undertaken in the intervening period.*

- Verifiable information regarding his current state of health and any therapeutic intervention he may be receiving.

Removal Order

The panel noted that a removal order is a sanction of last resort where there is no other means of protecting the public or the wider public interest. The panel took the view that currently a removal order would be disproportionate as there was still reason to hope that Mr Lindsay will address the deficits in his practice. However, Mr Lindsay should be aware that at some future date, a continued lack of engagement could result in removal no longer being disproportionate."

Social Work England submissions:

16. Social Work England's submissions were set out in the notice of review as follows:

"Social Work England invites the Panel at the Review Hearing to make a Removal Order.

The last written update from the Social Worker was provided on 7 October 2021, when he stated that he was working for DWP and had been since February 2021. The panel at the Review hearing on 1 August 2022 made recommendations in the same terms as the panel at Final Hearing, and none of these have been followed in that period of more than two years.

The panel at Final Hearing noted the Social Worker's remorse and that the misconduct was in principle remediable, but that there was no up-to-date evidence that effective remediation had occurred. The panel noted that the Social Worker remained liable to put service users at unwarranted risk of harm. That situation has not changed, and so that risk also remains.

At the Review hearing, the panel noted that it had "no evidence before it of any developing insight" and could not be confident that the Social Worker had remediated his misconduct. The panel found that "there had not been any significant change since the current suspension order was imposed".

Further, the panel specifically noted that the Social Worker should be aware that "at some future date, a continued lack of engagement could result in removal no longer being disproportionate".

The Sanctions Guidance (Dec 2022) provides that a Removal Order may be appropriate in a case with a "persistent lack of insight into the seriousness of their actions or consequences". Further there is not evidence that the Social Worker is willing or able to remediate.(para 149).

A removal order is a sanction of last resort where there is no other means of protecting the public or the wider public interest. The previous reviewing panel felt at

that stage there remained “reason to hope” that the Social Worker would address the deficits in his practice, but he has not taken the opportunity to do so.

There is a persuasive burden on the Social Worker to show that he has fully acknowledged and sufficiently addressed the concerns.

Whilst there may naturally be some sympathy with the Social Worker’s position as to his health, no further information as the [sic] Social Worker’s physical or mental health has been provided. The Social Worker has now had ample opportunity to engage with Social Work England and provide evidence or communication of his desire to remediate or return to unrestricted practice, but he has not taken that opportunity. His fitness to practise remains impaired.

There is no basis for concluding that a further extension would lead to the Social Worker taking steps to remediate his failings and reducing the risks to the safety of service users and the general public that were identified by the Final Hearing panel. He cannot be allowed to return to unrestricted practice until the risks are addressed. He shows no signs of addressing these risks, and this situation cannot continue endlessly and without change.

It is Social Work England’s submission that a further extension and consequent review would not serve any useful purpose.

A Removal Order is now appropriate and proportionate.”

Social worker submissions:

17. There were no submissions for or on behalf of Mr Lindsay for this review.

Panel decision and reasons on current impairment:

18. 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 panels. 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’.
19. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and the previous review panel. The panel also took account of the written submissions made on behalf of Social Work England.
20. 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 maintain public confidence in the profession.

21. The panel first considered whether Mr Lindsay's fitness to practise remains impaired.
22. Mr Lindsay did not present any new information for the panel to review. There was no evidence of remediation, or the development of insight. Mr Lindsay has not engaged with the recommendations of the review panel and there is no information on his current circumstances or his current health. The panel considered that there had been no change in the circumstances since the last review.
23. The panel agreed with the assessment of the review panel that Mr Lindsay's misconduct had been very serious. He had placed a service user and a colleague at direct risk of harm by driving a car with them as passengers, whilst having consumed excessive alcohol. There was no evidence that Mr Lindsay had reflected on his actions or had an understanding of the seriousness of his conduct. While the conduct is remediable, the panel had no evidence to reassure it that the misconduct would not be repeated. Mr Lindsay had not discharged the persuasive burden on him to demonstrate that he has addressed the concerns in the previous finding of impairment.
24. In the absence of any new evidence, the panel concluded that there remains a risk of repetition and consequently there is an ongoing risk of harm to service users and members of the public.
25. The panel also considered that the ongoing risk of harm engaged the need to maintain public confidence in the profession. A well-informed member of the public would be concerned if Mr Lindsay were permitted to return to unrestricted practice.

Decision and reasons:

26. Having found Mr Lindsay's fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel had regard to the submissions made along with all the information and accepted the advice of the legal adviser.
27. The panel considered the submissions made on behalf of Social Work England, during which the panel was invited to consider imposing a removal order. The panel also took into account the 'Impairment and sanctions guidance' published by Social Work England.
28. The panel was mindful that the purpose of any sanction is not to punish Mr Lindsay, but to protect the public and the wider public interest. The public interest includes maintaining public confidence in the profession and Social Work England as its regulator and by upholding proper standards of conduct and behaviour. The panel applied the principle of proportionality by weighing Mr Lindsay's interests with the public interest.
29. As recommended in the 'Impairment and sanctions guidance' the panel considered the sanctions in ascending order of severity.

No Action

30. The panel considered that the nature and seriousness of Mr Lindsay's fitness to practise impairment has not been fully addressed and that there were no exceptional circumstances identified. It therefore concluded that it would be inappropriate to take no action because this would not protect the public or address the wider public interest.

Advice or Warning

31. The panel then considered whether to issue advice or a warning. The panel noted that neither of these sanctions would restrict Mr Lindsay's ability to practise and were therefore not appropriate where there is a current risk to public safety. Therefore, the panel concluded that issuing advice or a warning was inappropriate because they would not adequately protect the public or address the wider public interest.

Conditions of Practice Order

32. The panel went on to consider a conditions of practice order. Although the misconduct is potentially remediable, the panel decided that conditions of practice would be insufficient to protect the public and therefore inappropriate. Mr Lindsay has not demonstrated the level of insight or engagement that would be required for a conditions of practice order and the panel had insufficient confidence that he would comply with conditions of practice.

Suspension Order

33. The panel noted that it was made clear to Mr Lindsay in the decision of the last review panel that a continued lack of engagement might have the consequence that the sanction of last resort might be imposed. Mr Lindsay has had the opportunity to consider his options and reflect on his position since 16 August 2022, but has not engaged with Social Work England or this review. The panel inferred that Mr Lindsay is not willing or able to engage with the process and demonstrate insight into and remediation of his misconduct.
34. The panel referred to the 'Impairment and sanctions guidance' at paragraphs 138 which states:

"Suspension is likely to be unsuitable in circumstances where (both of the following):

- *The social worker has not demonstrated any insight and remediation*
- *There is limited evidence to suggest they are willing (or able) to resolve or remediate their failings."*

35. The panel considered that both applied in this case, indicating that a suspension was not likely to be suitable.
36. Mr Lindsay has been subject to a suspension order for more than two years, and it has not been effective in enabling him to demonstrate a willingness to engage with the regulator and address the finding of impairment. In the circumstances, the panel was of the view that a further period of suspension would serve no purpose. A suspension order would be insufficient to maintain public confidence in the profession and the regulatory process in

circumstances where the panel has concluded that there is no realistic prospect that Mr Lindsay will engage with the regulator.

Removal Order

37. The panel was satisfied it could consider that a removal order was available to the panel as Mr Lindsay's fitness to practise was originally found impaired on the basis of regulation 25(2)(a) and (c).
38. The panel noted that a removal order is a sanction of last resort where there is no other means of protecting the public or the wider public interest. The panel referred to paragraph 149 of the 'Impairment and sanctions guidance' which indicates that a removal order may be appropriate in cases involving:
- Persistent lack of insight into the seriousness of their actions or consequences
 - Social workers who are unwilling and/or unable to remediate (for example, where there is clear evidence that they do not wish to practice as a social worker in the future).
39. The panel considered that these circumstances applied in Mr Lindsay's case, indicating that a removal order might be an appropriate sanction. Mr Lindsay had been expressly made aware of the possibility of a removal order, but this has not impacted on the level of his engagement. The panel agreed with the submissions of Social Work England that a removal order was the proportionate order. The panel considered Mr Lindsay's financial and professional interests, but decided that they were outweighed by the need to protect the public and maintain public confidence in the profession.

Right of appeal:

40. 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.

41. 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.
42. 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.
43. This notice is served in accordance with Rules 44 and 45 of the Fitness to Practise Rules 2019 (as amended).

The Professional Standards Authority

44. 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>