



Social worker: Johanne O'Brien

Registration number: SW105464

Fitness to Practise

Final Order Review Meeting

Date of meeting: 5 June 2024

Meeting venue: Remote meeting

Final order being reviewed: Suspension order – (expiring 17 July 2024)

Hearing Outcome: Impose a new order namely a 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 6 months by a panel of adjudicators on 20 June 2023. At the first review on 4 December 2023 the suspension order was extended for a further six months with effect from the expiry of the original order.
2. Ms O'Brien 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
Karen McArthur	Chair
Louise Fox	Social worker adjudicator

Hearings team/Legal adviser	Role
Paul Harris	Hearings officer
Khadija Rafiq	Hearings support officer
Scott McDonnell	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 order review hearing dated 3 May 2024 and addressed to Ms O'Brien at her email address which she provided to Social Work England
 - An extract from the Social Work England Register as at 3 May 2024 detailing Ms O'Brien's registered email address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 3 May 2024 the writer sent by email to Ms O'Brien at the email address referred to above: notice of hearing and related documents.
5. The panel accepted the advice of the legal adviser in relation to service of notice.
6. Having had regard to the Social Work England Fitness to practise rules 2019 (as amended) (the Rules) 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 Ms O'Brien in accordance with Rules 14, 15, 44 and 45.

Proceeding with the final order review as a meeting:

7. The notice of final order review informed Ms O'Brien 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 20 May 2024. 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 Ms O'Brien 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 Fitness to Practise Rules 2019 (as amended) 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 was satisfied that it would be fair and appropriate to conduct the review in the form of a meeting in accordance with Rule 16(c).

Review of the current order:

11. 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).
12. The current order is due to expire at the end of 17 July 2024.
13. The panel noted all the documentation presented in support of the final order review hearing, namely the hearing bundle (48 pages) and the service and supplementary bundle (11 pages).

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

1. Whilst registered as a social worker and during the course of your employment as a social worker, you breached professional boundaries by:
 - b. permitting Foster Carer G to be your friend on Facebook at some point from November 2020 onwards;

- c. maintaining contact with Foster Carer G between November 2020 and August 2021 after your professional involvement had ended;
- d. permitting Foster Carer G and her foster children to visit your home in or around August 2021.

2. On or around January 2021 you falsely informed your employers at Gloucester County Council that all your Facebook contacts were non-work related.

3. On or around the 18 August 2021 you gave a false account of your actions at 1(d) to your manager at Gloucester County Council.

4. Your actions at (3) were dishonest.

Your actions at (1), (2), (3) and (4) amount to misconduct.

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

The previous final order review panel on 4 December 2023 determined the following with regard to impairment:

14. *"The panel first considered whether Ms O'Brien's fitness to practise remains impaired. Ms O'Brien has not engaged with the process or the recommendations of the final hearing panel. Despite reminders, she has provided no evidence for the panel to review, and she has not engaged with Social Work England's case review team.*
15. *Ms O'Brien has not demonstrated that she has taken remedial action. The panel has not been provided with evidence that the risk of repetition identified by the final hearing panel has been addressed.*
16. *The panel therefore concluded that there has been no change in the circumstances and that Ms O'Brien's fitness to practise remains impaired."*
17. The previous final order review panel on 4 December 2024 determined the following with regard to sanction:

"Take no further action/revoke the suspension order or allow it to lapse upon its expiry/ impose a warning order

18. *The panel decided that these options would be insufficient to protect the public and the wider public interest because they would not address the ongoing risk of repetition.*
- Impose a conditions of practice order*
19. *The panel decided that conditions of practice would be insufficient and unsuitable in circumstances where Ms O'Brien is currently not engaging with Social Work England and has not provided any evidence to the panel in response to the suggestions made by the final hearing panel. The panel has no information on Ms O'Brien's circumstances and has insufficient confidence that she would comply with conditions of practice.*

Extend the current suspension order for a further period of time with effect from the expiry of the current order:

20. *The panel considered whether the current suspension order should be extended for a further period of time, not exceeding three years.*
21. *The panel was of the view that Ms O'Brien's lack of sufficient insight, as described in the final hearing panel's decision, remained capable of being remedied. Ms O'Brien had engaged fully with the fitness to practise process until the decision of the final hearing panel. There were also a number of mitigating features as noted by that panel. At the time of the final hearing panel Ms O'Brien was willing to engage in a further period of reflection, and there is no information before this panel to indicate that she is no longer willing to do so.*
22. *At this stage, five months after the final hearing panel decision, the panel was of the view that it was too soon to draw an inference that Ms O'Brien's position has changed and that she is no longer willing to address the concerns raised in the finding of impairment.*
23. *A suspension order would prevent Ms O'Brien from practising during the suspension period, which would therefore protect the public and the wider public interest. A suspension order would also be proportionate in that it would provide Ms O'Brien with a further opportunity to engage with the recommendations made by the final hearing panel.*
24. *The panel considered that an extension for a further period of six months was appropriate and proportionate. This was sufficient time for Ms O'Brien to consider whether she wishes to re-engage with the process and provide information for the next review of the order.*
25. *The panel considered the more restrictive option of a removal order. Although Ms O'Brien's lack of engagement might indicate that this option was appropriate, the panel decided that a removal order would not be appropriate or proportionate. In particular, it would not currently be reasonable to draw an inference that Ms O'Brien is unwilling to engage with her regulator and participate in the process. The panel noted the references to Ms O'Brien's personal circumstances in the decision of the final hearing panel.*
26. *This panel has no new information on Ms O'Brien's circumstances, but the limited information available indicates the potential for there to be a barrier to Ms O'Brien's full engagement.*
27. *The panel therefore decided that the appropriate and proportionate order was an extension of the suspension order for a period of six months.*
28. *The panel takes this opportunity to repeat the recommendations made by the final hearing panel. The purpose of the recommendations is to assist Ms O'Brien in evidencing her development of insight. The panel considered that a reviewing panel may be assisted by the following:*
 - *Ms O'Brien's attendance;*
 - *Evidence of the successful completion of any on-line or other courses undertaken by Ms O'Brien in respect of professional boundaries;*

- Evidence of any relevant reading around the subject of professional boundaries;
- A reflective piece demonstrating Ms O'Brien's learning around professional boundaries, including how such learning would have made a difference to her past actions and how such learning would inform her judgement and decision making in the future.

29. The panel would also encourage Ms O'Brien to engage with Social Work England's review team as fully as she is able to. It would be helpful if she could provide an update on her current circumstances, including any difficulties which she may have faced since the imposition of the suspension order.

30. This panel cannot fetter the discretion of a future review panel, but it reminds Ms O'Brien that social workers are expected to engage with Social Work England, and that her level of engagement is one of the matters that will be considered at the next review of the suspension order."

Social Work England submissions:

31. The panel read the written submissions from Capsticks LLP on behalf of Social Work England who invited the panel to find that Ms O'Brien's fitness to practise remains impaired and to impose a Removal Order:

"Subject to any further evidence or submissions received from the Social Worker prior to, or at the review hearing, Social Work England will invite the Panel to replace the Suspension Order with a Removal Order.

Since the Order was reviewed and extended on 4 December 2023, the Social Worker has not been in communication with Social Work England, there has been no reflective piece and no evidence of insight as to the impact her impairment may have had on her fitness to practise.

This is the second review of the Suspension Order, the previous Panel extended the Suspension Order for a further 6 months to enable the Social Worker to engage. It is noted that the Social Worker has not engaged with Social Work England and there is no new information to suggest that there has been a material change.

Social Work England invites the Panel to find that the Social Worker's fitness to practise remains impaired. In light of the Social Worker's failure to comply with the recommendations despite the further opportunity to develop insight and provide evidence of remediation, Social Work England invite the Panel to replace the current Suspension Order with a Removal Order.

If the Panel are of the view that there is sufficient explanation for the Social Worker's lack of engagement such that she would be given a further period to demonstrate engagement, the Panel are invited to extend the Suspension Order by a period of six months. This would provide a meaningful period of time for the Social Worker to address their lack of compliance and provide further evidence of insight and remediation."

Social worker submissions:

32. Ms O'Brien provided no submissions for this meeting.

Panel decision and reasons on current impairment:

33. 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'.

34. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel and previous review panel. The panel also took account of the written submissions made by Capsticks LLP.

35. The panel heard and accepted the advice of the legal adviser. The panel was reminded that a social worker's fitness to practise is impaired if they pose a risk to public safety, or if their conduct or performance undermines the confidence the public is entitled to place in all social workers in England. A social worker's fitness to practise may also be impaired if their actions make it necessary to send a public message about the standards expected of social workers.

36. If the panel decide that Ms O'Brien's practice is currently impaired then it should then consider what sanctions are available and refer to Social Work England's "Sanctions Guidance". The panel must start from the least restrictive sanction. Insight and remediation are important factors.

37. The panel first considered whether or not Ms O'Brien's fitness to practise remains impaired.

38. The panel noted that Ms O'Brien had not provided any more information since the last meeting and she had not engaged with Social Work England. The panel had nothing before it to demonstrate that Ms O'Brien understood where professional boundaries lay. Further, Ms O'Brien had not adopted or taken advantage of the recommendations of the previous panel to provide evidence of insight and remediation.

39. The panel decided that in light of this the risk posed by Ms O'Brien to service users had not changed. There has been no information to suggest any change in Ms O'Brien's circumstances and the panel concluded that Ms O'Brien's fitness to practise remains impaired.

Decision and reasons:

40. Having found Ms O'Brien'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.

41. The panel considered the written submissions made by Capstick's LLP on behalf of Social Work England, during which they invited the panel to consider imposing a Removal Order.
42. The panel also took into account the 'Impairment and sanctions guidance' published by Social Work England.
43. The panel was mindful that the purpose of any sanction is not to punish Ms O'Brien, 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 Ms O'Brien's interests with the public interest.

No further action, advice or warning

44. The panel decided that taking no action, issuing advice or issuing a warning would not address the serious nature of Ms O'Brien's misconduct. Nor would they adequately protect the public as they would not restrict Ms O'Brien's practice.

Conditions of practice order

45. The panel next considered whether conditions of practice could be imposed rather than extending the current suspension order.
46. The panel noted that there had been no recent engagement by Ms O'Brien. As such the panel had no knowledge of her current circumstances and whether the imposition of conditions would be a practical solution.
47. The panel had no material before it that would allow it to conclude that Ms O'Brien would comply, in particular noting that she had failed to adopt any of the recommendations by the previous panel and make use of the advice or chances offered by it. Therefore the panel was not satisfied that workable conditions could be formulated to adequately protect the public or address the wider public interest concerns.
48. The panel concluded that a conditions of practice order could not be made in light of all of these circumstances.

Suspension Order

49. Having determined that a conditions of practice order would not be appropriate, the panel then went on to consider if a suspension order would be the most appropriate sanction
50. The panel noted that Ms O'Brien had been suspended from practising for over a year. This had provided her with an opportunity to address the concerns identified by the findings of the final order panel and the previous review panel. The panel noted that Ms O'Brien had failed to take advantage of any of these opportunities.
51. The panel noted that the original suspension order had been extended for a period of 6 months and the evidence showed that Ms O'Brien had failed to engage and provide information that would assist this review panel.

52. Ms O'Brien had done nothing in the intervening time period to address the concerns and findings against her. She had not adopted the advice of the previous review panel including providing evidence of the successful completion of any courses, evidence of any relevant reading, or provided a reflective piece demonstrating Ms O'Brien's learning around professional boundaries.

53. The panel decided that a further suspension order would not be sufficient to protect the public and the wider public interest, and maintain public confidence in the profession.

Removal order

54. The panel was satisfied it could consider that a removal order was available to the panel as Ms O'Brien's fitness to practise was originally found impaired on the basis of one or more grounds, as set out in regulation 25(2)(a), (c), (d), (f) or (g), namely misconduct.

55. The panel took into account the Sanctions Guidance which 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."

56. 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 a removal order was appropriate because Ms O'Brien had failed to address the findings by the final hearing panel and take steps to demonstrate that she was no longer impaired.

57. Ms O'Brien had failed to engage with these proceedings since the final hearing and take advantage of the opportunities provided to her to demonstrate insight and remediation. This panel would have been greatly assisted if Ms O'Brien had attended today's proceedings or provided the material identified as assisting it by the last review panel, but this was not the case.

58. The panel concluded that Ms O'Brien's current impairment and continuing risk to service users required that she should be removed from the register to protect the public from harm. The panel decided that Ms O'Brien should be removed from the register at the expiry of the current suspension order.

59. In reaching this conclusion the panel balanced the public interest against Ms O'Brien's interests. The panel took into account the consequential personal and professional impact a removal order may have upon Ms O'Brien, but concluded that these considerations are significantly outweighed by the panel's duty to give priority to public protection and the wider public interest.

Right of appeal:

60. 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,

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

61. 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.

62. 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.

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

Review of final orders:

64. 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).

65. 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

66. 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>