

Social worker: Nikolas Binder
Smith

Registration number: SW35121

Fitness to Practise

Final Order Review Meeting

Date of Meeting: 10 June 2024

Meeting venue: Remote Meeting

Final order being reviewed: Suspension Order - expiring 22 July 2024

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 18 months by a panel of adjudicators on the 23 January 2023.
2. Mr Binder Smith 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
Linda Norris	Social worker adjudicator

Hearings team/Legal adviser	Role
Tom Stoker	Hearings officer
Khadija Rafiq	Hearings support officer
Christopher Binns	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 the 8 May 2024 and addressed to Mr Binder Smith at their email address which he provided to Social Work England;
 - An extract from the Social Work England Register as of 8 May 2024 detailing Mr Binder Smith's registered email address;
 - A copy of a signed statement of service, on behalf of Social Work England, confirming that on 8 May 2024 the writer sent by email to Mr Binder Smith at the 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 Rules 16 and all of the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been served on Mr Binder Smith in accordance with Rules 44 and 45 of Social Work England's Fitness to Practise Rules 2019 (as amended) ('the Rules').

Proceeding with the final order review as a meeting:

7. The notice of final order review informed Mr Binder Smith 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 22 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 accepted the advice of the legal adviser in relation to the factors it should take into account when considering this application. This included reference to Rule 16 of the Rules and the cases of *R v Jones [2002] UKHL 5*; *General Medical Council v Adeogba [2016] EWCA Civ 162*.
9. The panel noted that Mr Binder Smith had been sent notice of today's hearing and the panel was satisfied that he was or should be aware of today's hearing. The panel received no information to suggest that Mr Binder Smith had responded to the notice of final order review. The panel noted no application for an adjournment had been made by Mr Binder Smith and he had not responded to correspondence from the regulator since the previous review.
10. 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."
11. The panel considered that adjourning the proceedings for a hearing was unlikely to result in Mr Binder Smith's participation in light of his non-engagement with the proceedings and that the public protection concerns arising from the allegations were serious. The panel decided to proceed in the interests of justice and the expeditious disposal of this hearing.
12. 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:

13. This final order review hearing falls under the Transitional and Savings Provisions (Social Workers) Regulations 2019 and as a result the review will be determined in accordance with 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).
14. The current order is due to expire at the end of 22 July 2024.

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

15. The regulatory concerns, which were subject to the accepted disposal, are as follows:

"1. Whilst registered as a Social Worker and during the course of your employment with Norfolk County Council between 2014 and December 2018, you failed to demonstrate the necessary level of knowledge, skill or judgment in that you:

1.1 You failed to progress your caseloads;

1.2 You failed to close your cases in a timely manner;

...

1.4 You failed to follow up on financial concerns in a timely manner or at all;

1.5 You failed to record assessments and reviews in a timely manner;

1.6 You failed to take on a sufficient number of new cases between July 2014 and October 2016;

1.7 You failed to review care and support plans in a timely manner.

2. You suffer from an adverse health condition as set out in Schedule 1 which impacts on your ability to practise as a Social Worker.

Schedule 1:

- *[PRIVATE]*

The matters outlined in regulatory concern (1) amount to the statutory ground of lack of competence or capability.

The matters outlined in regulatory concern (2) amount to the statutory ground of adverse physical or mental health."

The previous final order review panel on 23 January 2023 determined the following with regard to impairment:

16. The panel noted that the previous panel referred to Mr Binder Smith throughout its determination as Mr Smith.

17. *"The Case Examiners had identified an insufficient level of remediation and insight, and the panel noted that there has been no development since. Mr Smith has failed to take the opportunity given to him to work under conditions and to utilise the time to further reflect on the regulatory concerns. Instead, he has withdrawn from social work practice, indicated that he no longer seeks to pursue the profession and has failed to comply with conditions imposed. The panel noted that condition 9 was particularly pertinent as it gave Mr Smith the*

opportunity to demonstrate reflection, and therefore insight and remediation. However, Mr Smith failed to provide a reflective piece by the time stipulated, despite receiving reminders and warnings by Social Work England.

18. *There is no evidence that he has addressed the failings identified by the Case Examiners and, in fact, he has since been dismissed from an employer, Norfolk County Council, due to lack of competence. The panel has had sight of the dismissal letter, dated 14 July 2022, which details a range of failings that are not dissimilar to those that constituted the regulatory concerns.*
19. *In light of the lack of evidence of remediation, or further development of insight, the panel found that there was a substantial risk of repetition of Mr Smith's failings and that a finding that his fitness to practice is impaired therefore remained necessary to protect the public.*
20. *Further, in light of the lack of evidence of developing insight and remediation, together with Mr Smith's failure to adhere to the conditions of practice order, the panel concluded that members of the public would be deeply concerned if his fitness to practise was not found to be impaired and that such a finding would undermine public confidence in the profession. Such a finding would similarly fail to uphold professional standards."*

The previous final order review panel on 23 January 2023 determined the following with regard to sanction:

21. *"Having determined that a conditions of practice order would not be appropriate, the panel considered whether to impose a period of suspension. The panel concluded that this would be appropriate and proportionate in all of the circumstances.*
22. *The panel took into account that the regulatory concerns were principally as a consequence of lack of competence, which is remediable. If remedied, there would no longer be a significant risk to the public. The panel also considered that it was in the interests of the public to give social workers the opportunity to remediate concerns so that they can utilise their skills and qualifications to serve the public. Whilst the panel doubted that he will take the opportunity afforded by a suspension, it nevertheless concluded that the opportunity should be afforded to him and that it was in the public interest to do so.*
23. *The panel was satisfied that a suspension of 18 months would reflect the seriousness of the regulatory concerns and will give him the opportunity to develop insight and remediation."*

Social Work England submissions:

24. The panel read the background and the previous panel's findings in relation to impairment and sanction.
25. The panel read the submissions by Social Work England in relation to Mr Binder Smith's current impairment and sanctions as set out in the notice of hearing letter:

“Social Work England invite the Panel to replace the Suspension Order with a Removal Order on the basis that it is necessary to protect the public and in the wider public interest.

The Social Worker was initially given a Conditions of Practice Order, which had the purpose of providing him with an opportunity to demonstrate full remediation. The Social Worker was subsequently dismissed by his employer for similar reasons to these Regulatory Concerns, failed to comply with the requirement to submit a written reflection (Condition 9) and emailed Social Work England to express his desire never to return to social work. There has been no engagement whatsoever from the Social Worker since the imposition of the Suspension Order. This is in the context of him not participating in the last review hearing, as well as him stating that he has no intention of returning to social work practice. This case involves serious concerns about the Social Worker’s ability to practice safely and competently. Without evidence to support a finding of a lower risk of repetition, given the need to protect the public, a finding of impairment is necessary. The wider public interest requires that standards are upheld and maintained, which cannot be said to be achieved without a finding of impairment in the circumstances.

It is submitted that the Social Worker remains impaired. The Social Worker has failed to utilise the opportunity to demonstrate that he can practise safely. Social Work England submits that the Social Worker has shown there is no realistic prospect of him engaging in future. Accordingly, it is submitted that a Removal Order is necessary and proportionate.”

Social worker submissions:

26. The panel did not receive any submissions from Mr Binder Smith .

Panel decision and reasons on current impairment:

27. In considering the question of current impairment, the panel undertook a comprehensive review of the final order in light of the current circumstances. It took into account the decision of the previous panel and the case examiners. 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’.

28. The panel had regard to all of the documentation before it, including the decision and reasons of the previous review panel. The panel also took account the written submissions on behalf of Social Work England.

29. 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.

30. The panel first considered whether Mr Binder Smith fitness to practise remains impaired. The panel noted that the previous panel found that Mr Binder Smith had not provided evidence of remediation, or further development of insight and that there was a substantial risk of repetition of Mr Binder Smith ’s failings and that a finding that his fitness to practice was impaired therefore remained necessary to protect the public.

31. The panel noted that the suspension order imposed by the previous panel provided Mr Binder Smith with the opportunity to provide evidence of remediation, development of insight and testimonials but he had failed to engage with the regulator. The panel found a substantial risk of repetition remained as a result of Mr Binder Smith's failings and that a finding that his fitness to practice is impaired therefore remained necessary to protect the public.
32. In light of the lack of evidence of developing insight and remediation, together with Mr Binder Smith's lack of engagement with the regulator, the panel concluded that members of the public would be deeply concerned if his fitness to practise was not found to be impaired and that such a finding would undermine public confidence in the profession. Such a finding would similarly fail to uphold professional standards.

Decision and reasons:

33. Having found Mr Binder Smith's fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case.
34. The panel had regard to the submissions made along with all the information and accepted the advice of the legal adviser.
35. The panel considered the submissions made by Social Work England. The panel also took into account the 'Impairment and sanctions guidance' published by Social Work England.
36. The panel was mindful that the purpose of any sanction is not to punish Mr Binder Smith, 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 Binder Smith's interests with the public interest.

Revoke or allow the suspension order to lapse

37. The panel concluded that, in view of the nature and seriousness of Mr Smith's failings, which had not been remedied, and in the absence of exceptional circumstances, it would be inappropriate to take no action or revoke the suspension order. Furthermore, it would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

Advice or Warning

38. The panel considered whether to impose an advice or warning order.
39. The panel noted that neither of these sanctions would restrict Mr Binder Smith's ability to practise and were therefore not appropriate where there is a current risk to public safety. In any event, the deficiencies identified with Mr Binder Smith's practice had the potential to have wide-ranging adverse consequences and therefore some restriction on their practice is

required. Therefore, the panel concluded that issuing a warning would be inappropriate and insufficient to meet the public interest.

Conditions of practice order

40. The panel went on to consider a conditions of practice order. The panel noted that Mr Binder Smith has been subject to a conditions of practice order prior to the previous panel and has failed to obtain employment as a social worker during that period. Instead, he stated in an email dated 20 November 2022 that he no longer sought to pursue a social work career. There has therefore been inadequate development of insight and remediation through registered employment.
41. The panel noted the previous panel had imposed a suspension order as a result of Mr Binder Smith's failure to comply with the conditions of practice order. In light of Mr Smith's failure to adhere to the conditions of practice order, the panel found that suitable conditions can no longer be formulated to adequately protect the public and satisfy the public interest.

Suspension order

42. The panel noted that the previous panel had imposed a suspension order for a period of 18 months on the basis that the regulatory concerns were principally as a consequence of lack of competence, which were remediable. If remedied, there would no longer be a significant risk to the public. The previous panel also considered that it was in the interests of the public to give social workers the opportunity to remediate concerns so that they can utilise their skills and qualifications to serve the public. Whilst the previous panel doubted that he would take the opportunity afforded by a suspension, it nevertheless concluded that the opportunity should be afforded to him and that it was in the public interest to do so.
43. The panel concluded an extension of the suspension order would not be appropriate. Mr Binder Smith has not provided evidence of remediation or development of insight. Mr Binder Smith has previously emailed the regulator on 20 November 2022 indicating he does not wish to return to the profession therefore the panel conclude further period of suspension will not result in his engagement and would therefore not be proportionate or in the wider public interest.

Removal order

44. The panel was satisfied it could consider that a removal order was available to the panel as Mr Binder Smith's fitness to practise was originally found impaired on the basis of one or more grounds as set out in regulation 25(2), (b), (e) or (h) and he had been suspended from practice or subject to a conditions of practice final order (or a combination of both) for a continuous period of two years immediately preceding the day when the removal order would take effect.
45. 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. Mr Binder Smith has failed to utilise the opportunity to demonstrate that he can practise safely. There is no realistic

prospect of Mr Binder Smith engaging with the regulator or providing evidence of remediation in the future. The panel concluded that a removal order is therefore necessary to protect the public, maintain public confidence and uphold the reputation of the profession.

Right of appeal:

46. 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.
47. 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.
48. 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.
49. This notice is served in accordance with Rules 44 and 45 of the Fitness to Practise Rules 2019 (as amended).

Review of final orders:

50. 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).

51. 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

52. 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>