

Social worker: Saneliso Matshanga

Registration number: SW116474

Fitness to Practise

Final Order Review meeting

Date of meeting: 30 October 2023

meeting venue: Remote meeting

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

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 12 months by a panel of adjudicators on 17 August 2022 and confirmed and continued by a review panel on 27 July 2023.
2. Ms Matshanga 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
Bryan Hume	Chair
Linda Norris	Social worker adjudicator

Hearings team/Legal adviser	Role
Jenna Keats	Hearings officer
Mollie Roe	Hearings support officer
Gerard Coll	Legal adviser

Service of notice:

4. Ms Matshanga did not attend and was not represented.
5. The panel of adjudicators (the panel) were provided with the following bundles of documents:
 - 1.1 Substantive Order Review Bundle of 78 pages;
 - 2.1 Service Bundle SOR of 12 pages.
6. 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 29 September 2023 and addressed to Ms Matshanga at their postal and email addresses which she provided to Social Work England;

- an extract from the Social Work England Register as of 29 September 2023 detailing Ms Matshanga’s registered postal and email addresses which matched the delivery addresses above;
 - a copy of a signed statement of service, on behalf of Social Work England, confirming that on 29 September 2023 the writer sent by email to Ms Matshanga at the email address referred to above: notice of hearing and related documents;
 - a copy of a server generated confirmation of access to the files served on 2 October 2023.
7. The panel accepted the advice of the legal adviser in relation to service of notice in accordance with Social Work England Fitness to Practise Rules (the rules). Having had regard to rule 44 of 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 Matshanga in accordance with the rules.

Proceeding with the final order review as a meeting:

8. The notice of final order review informed Ms Matshanga 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 4:30pm on 16 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.”*
9. The panel received no information to suggest that Ms Matshanga had responded to the notice of final order review nor had any request for an adjournment.
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 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:

12. This final order review hearing is taking place under paragraph 15(1) of Schedule 2 of The Social Workers Regulations 2018 (as amended) (the regulations) and in accordance with the rules.
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:

"1 - On or around 20 January 2017 and/or 6 March 2018, while working at West Sussex County Council as a student and/or an employee, an audit shows that your login ID "CMED7480" accessed and/or attempted to access cases on a case record system (Mosaic) relating to:

- a. Person A; and/or;*
- b. Service User A; and/or;*
- c. Service User B; and/or*
- d. Service User C;*

without a professional reason to do so.

2 - Between 19 January 2017 and 7 March 2018, while working at West Sussex County Council as a student and/or an employee, you did not keep confidential information secure in that:

- b. you did not keep your West Sussex County Council login ID and password secure;*
- c. you left your diary that contained your West Sussex County Council log in and/or password information on your desk unattended; and/or;*
- d. service User B had access to your diary at home; and/or;*
- e. you did not keep your diary and/or notebook, which contained your West Sussex County Council login details and/or password information, securely locked;*

3 - In or around October 2017, while applying for the role of social worker with West Sussex County Council you failed to disclose that you had received a police caution in 2011 for the offence as set out in Schedule A on a 'Shortlisted Candidate Information' form when asked "Have you ever had any convictions, cautions, reprimands or final warnings given by the police?"

4- Between 2018 and 2019, while registered as a social worker, you acted unprofessionally towards employees of West Sussex County Council supporting you in your personal life in that you:

- b. Between May and June 2018, would not allow employee(s) to speak during a telephone conversation(s);*

5- Your conduct at paragraph 3 was dishonest."

The first Substantive Order Review meeting panel on 27 July 2023 determined the following with regard to impairment:

14. *'The panel noted that Ms Matshanga had demonstrated a lack of engagement and had failed to provide any information today to assist the panel. It was clear that Ms Matshanga had been informed of today's proceedings but had chosen not to participate. Her attendance would have been highly beneficial to the panel.'*
15. *Ms Matshanga had not provided any evidence to the panel and she had not demonstrated that she was no longer a risk to service users or the wider public. The panel considered that she had chosen to disengage from the proceedings despite the serious nature of the regulatory concerns found against her.*
16. *From the material provided to the panel it was clear that Ms Matshanga continued to pose a risk. She had provided nothing to demonstrate insight or remediation. The panel had been provided with no material to address the issue of repetition and it could not be confident that there would not be any repetition of the misconduct found by the panel at the final hearing.*
17. *The panel noted that the previous panel had indicated to Ms Matshanga it would assist this panel in its deliberations if she provided various information and evidence, but Ms Matshanga had failed to do so. (Paragraph 50 above).*
18. *In light of there being no change in circumstances since the final order was made on 17 August 2022 the panel decided that Ms Matshanga remains a risk to others and her practice is currently impaired. This is on the basis of both personal and public grounds including the wider public interest.*
19. *The panel decided that Ms Matshanga posed a risk to public safety and her conduct and performance undermined the confidence the public is entitled to place in all social workers in England. The panel decided that it was necessary to send a public message about the standards expected of social workers.'*

The first Substantive Order Review meeting panel on 2 August 2023 determined the following with regard to sanction:

No action, Advice or Warning

20. *'The panel noted that none of these sanctions would restrict Ms Matshanga's ability to practise. As such they were not appropriate or sufficient to address the concerns raised due to the nature and seriousness of Ms Matshanga's impairment which has not yet been remedied.'*
21. *Furthermore, none would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.'*

Conditions of Practice Order

22. *'The panel went on to consider a conditions of practice order. The panel could not identify sufficient conditions to address Ms Matshanga's current impairment, noting her lack of engagement and the seriousness of the misconduct that had been found by the final hearing panel.'*
23. *In addition the panel decided that in light of the wide-ranging nature of the serious allegations it was not satisfied that conditions of practice could be devised which would be sufficient to protect the public.'*

Extend the current suspension order for a further 6 months with effect from the expiry of the current order

24. *'The panel considered whether the current suspension order should be extended for a further period of time.'*
25. *A suspension order would prevent Ms Matshanga from practising during the suspension period, which would therefore protect the public and the wider public interest.'*
26. *The panel determined that the suspension order should be extended for a period of 3 months. The panel gave very serious consideration to imposing a removal order due to the lack of engagement by Ms Matshanga and failure to undertake the tasks identified by the panel at the final hearing. This included failing to take steps to remediate.'*
27. *However, the panel felt that Ms Matshanga should be provided with one final opportunity to demonstrate that she could remediate. This was on the basis that Ms Matshanga is early in her career and her conduct is remediable. The panel did not agree with the submissions of Social Work England that 6 months was an appropriate period to extend the suspension as Ms Matshanga had already been given the opportunity to demonstrate insight during the period of the current 12 month order.'*
28. *Ms Matshanga should make all efforts to comply with the request of the final hearing panel to attend the next review and also provide the information at paragraph 50 above to assist the reviewing panel.'*

Submissions:

Social Work England

29. The panel read the written submissions from Social Work England contained in the Notice to Ms Matshanga date 29 September 2023, which were:

'Subject to a continued lack of engagement from the social worker by the date of review, Social Work England invites the panel to impose a removal order.'

The warning from the previous reviewing panel could not have been clearer. The panel noted that the social worker had had the opportunity during the period of the original Suspension Order (imposed for 12 months) to engage and demonstrate ability and willingness to remediate, but that they had not done so.'

While that last reviewing Panel does not bind the next reviewing Panel, their decision to extend by three months specifically notes that they considered this to be the “final opportunity” for the social worker to engage, and that they had given “serious consideration” to making a removal order at the last review.

The social worker has not engaged throughout this order. The social worker did not attend the final hearing. The social worker has provided no evidence or information as to the recommendations, or otherwise. They have demonstrated no interest in addressing the concerns raised at the final hearing and in returning to social work practice. The concerns that were found proved at the final hearing are serious, and involve dishonesty, which is more difficult to remediate as it is a concern relating to character.

The Sanctions Guidance provides (para. 149) that a removal order may be appropriate in a case where a social worker is unwilling and/ or unable to remediate. The social worker has been given plenty of opportunity to remediate, or even to show willing intent to remediate, and has not taken that opportunity afforded to her by two panels.

There is no change in circumstances from the final hearing, and so the social worker remains a risk to the public and their fitness to practise remains impaired.

The social worker cannot return to unrestricted practice at present. There is no information or evidence available to suggest that further extending the suspension period would achieve any remediation or reduction in risk, given the complete lack of engagement throughout the order so far. It is not appropriate for the order to continue to be extended and reviewed further, without any realistic prospect of engagement.

A removal order is now appropriate.

The social worker has been invited to provide evidence for the forthcoming review by 10 October 2023. If the social worker submits any such evidence, Social Work England reserves the right to reconsider the position set out in this Notice if appropriate.’

The social worker

30. There were no submissions by or on behalf of Ms Matshanga.

Panel decision and reasons on current impairment:

31. In considering current impairment, the panel undertook an independent and comprehensive review of the final order in light of the current circumstances. It was informed by and took into account the decision of the previous panels. The panel, however, has exercised its own judgement on whether the social worker’s professional practice is still currently impaired today.
32. The panel accepted the legal adviser’s advice. It took into account Social Work England’s ‘Impairment and Sanctions Guidance’.

33. The panel had regard to all of the documentation before it, including the decision and reasons of the original panel. The panel also took account of the written submissions provided by Social Work England.
34. The panel understood that the onus is now on Ms Matshanga to satisfy the panel that she is no longer impaired as at today's date. The panel took into consideration what was said by Mrs Justice Cox in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin).
35. In paragraph 74, she said: *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a 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.'*
36. In paragraph 116 she said, *'When considering whether fitness to practise is currently impaired, the level of insight shown by the practitioner is central to a proper determination of that issue.'*
37. Insight, the panel understood, has three aspects tied to the supporting objectives of the statutory objective of public safety;
- impact on service users' safety and wellbeing demonstrated by an understanding of the depth of the impact especially in cases where dishonesty is made out, an appropriately thorough acknowledgement of fault and practical measures to address the risks in future,
 - impact on the public's trust and confidence in the profession and reflections, professional development or training that will reassure the public that there is no longer an unaddressed identified risk and measures are in place to remove the risk of a repeat,
 - impact on the declaring and upholding of professional standards for social workers in England – are the things done by the social worker sufficient in all of the circumstances to reassure the panel that standards are not any longer at risk.
38. The social worker carries the persuasive burden of satisfying the panel that their fitness to practise is no longer impaired. In *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin) at paragraph 23 the court said that *'...the review has to consider whether all the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the panel's satisfaction. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision, or other achievement sufficiently addressed the past impairments.'*
39. The panel kept in mind what was said in the Supreme Court by Lord Wilson said in *Khan v GPhC* [2017] 1 WLR 169 SC (Sc) that

The Committee will also need to satisfy itself that the registrant has fully appreciated the seriousness of the relevant breach(es), has not committed any further breaches of the Council's standards of conduct, ethics, and performance, and has maintained their skills and knowledge to date, and that the public will not be placed at risk by resumption of practice or by the imposition of conditional registration. In that case, Lord Wilson also said:

The focus of a review is upon the current fitness of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of the suspension. The review committee will note the particular concerns articulated by the original committee and seek to discern what steps, if any, the registrant has taken to allay them during the period of his suspension. The original committee will have found that his fitness to practise was impaired. The review committee asks: "Does his fitness to practise remain impaired"?

It is also noteworthy that, in the fifth report of the Shipman Inquiry, 9 December 2004, Dame Janet Smith, Chair, stated at paragraph 27.267: "Review hearings are extremely important. They are the "teeth" behind the sanctions other than erasure and should focus the doctor's mind on the need to undertake any necessary remediation."

40. The panel recognised therefore that it should be alive to any material change in position since the last hearing which addresses the risks to the safety of the public;
41. In the event that the panel decided that Ms Matshanga's practice is currently impaired then it should then consider what sanctions are available and refer to Social Work England's Sanctions.

Current impairment of Fitness to practise

42. The panel first considered whether Ms Matshanga's fitness to practise remains impaired. The panel noted that Ms Matshanga had continued to demonstrate a concerning lack of engagement and had failed to provide any information today that might guide the panel in deciding whether a material change had been evidenced
43. Ms Matshanga had been informed of today's proceedings and reminded of the first review panel's analysis of what might assist her in taking this issue forward in a constructive way designed to secure the safety of the public. Ms Matshanga had elected not to participate. Her attendance at least, even without any written submissions of other documents in support would have been highly beneficial to the panel.
44. Ms Matshanga had not provided any evidence to the panel and she had not demonstrated that she was no longer a risk to service users or the wider public. The panel considered that despite the serious nature of the regulatory concerns found against her and the clear indications of a way forward for her, Ms Matshanga had not seized the opportunities available to her to demonstrate any insight or remediation into her fitness to practise. The panel had not been provided by her, or on her behalf, any material to address the issue of repetition and it could not be confident that there would not be any repetition of the misconduct found by the panel at the final hearing and the first review panel.

45. In light of there being no change in circumstances since the final order was first reviewed on 27 July 2023, the panel decided that Ms Matshanga remains a risk to others and her practice is currently impaired. This is on the basis of both personal and public grounds including the wider public interest.
46. The panel decided that Ms Matshanga posed a risk to public safety and her conduct and performance undermined the confidence the public is entitled to place in all social workers in England. The panel decided that it was necessary to send a public message about the standards expected of social workers.

Decision and reasons on sanction:

47. Having found Ms Matshanga'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 written submission provided by Social Work England and accepted the advice of the legal adviser. Social Work England invited the panel to impose a removal order. Nothing was submitted by or on behalf of Ms Matching to protest that this was unnecessary or disproportionate.
48. The panel also took into account the 'Impairment and Sanctions Guidance' published by Social Work England. The purpose of any sanction is not to punish Ms Matshanga but is only to protect the public and to address 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, recognising that it must identify what risks if any arose from Ms Matshanga's current impairment, and if necessary, meet those risks with the least restrictive but equally effective alternative to a removal order if possible. The panel must balance Ms Matshanga's interests with the interests of public protection, although the public interest is likely to outweigh her personal interests in the event that serious risks to the public remained unaddressed by her.

No action, advice of warning

49. The panel noted that none of these sanctions would restrict Ms Matshanga's ability to practise. As such they were not appropriate or sufficient to address the concerns raised due to the nature and seriousness of Ms Matshanga's impairment which has not yet been remedied.
50. None of these outcomes would be sufficient to protect the public, to maintain public confidence or to declare and uphold the reputation of the profession.

Conditions of practice order

51. The panel went on to consider a conditions of practice order. The panel recognised that conditions of practice were, in theory, practical, workable, measurable, and sufficient to meet the risks posed by Ms Matshanga's current impairment. Dishonesty had been a factor in that current impairment. However, as the High Court has reminded panels, dishonesty is a nuanced concept, which should be looked at carefully and in context. Distinctions had to

be drawn between cases where an act of dishonesty was immediate and irreparably corrosive of the public's trust and confidence and those other cases which suggested a poor decision made under pressure of circumstances. Ms Matshanga's case might have been regarded as falling into the latter category. Conditions attached to a call for sincere and honest reflections, supported by professional testimonials might have begun to address the issues. However, the panel had been supplied with nothing at all. In these circumstances, the panel could not identify sufficient conditions to address Ms Matshanga's current impairment, noting her continuing lack of engagement since the first substantive review and the seriousness of the misconduct that had been found by the final hearing panel.

52. In addition the panel decided that in light of the wide-ranging nature of the serious allegations it was not satisfied that conditions of practice could be devised which would be sufficient to protect the public without thoughtful and honest engagement by Ms Matshanga.

Further period of suspension

53. The panel considered whether the current suspension order should be extended for a further period of time.
54. A suspension order would prevent Ms Matshanga from practising during the suspension period, which would therefore protect the public and the wider public interest.
55. The panel determined that the suspension order already in place has not had the effect of encouraging Ms Matshanga to engage with the process in a purposeful way. The first review panel had categorised in an explicit and sensitive way the means for Ms Matshanga to reestablish her career in a way that would also fully protect the public. It was disappointing for the panel to find that, on the face of it, the first review panel's offer had been met with silence. The panel was unable to identify any reason for this that was inconsistent with an established and concluded decision by Ms Matshanga to resist any means of a safe and effective return to practice. If true, the panel considered that this would be, if otherwise unexplained, evidence of a deepened regression of insight and remediation by Ms Matshanga. It pointed towards an attitude of distance and indifference for the safety of vulnerable service users and the wider public interest that was inconsistent with her continued professional registration.
56. The panel concluded that, for reasons of public protection, it could not find any objective basis to provide Ms Matshanga with a further opportunity to demonstrate that she could remediate her practice. The panel accepted that Ms Matshanga had come to the attention of her regulator at an early in her career and her conduct is remediable partly for that reason. However, there was no purpose to be served by extending a period of suspension where there was no positive indication of any response by Ms Matshanga.

Removal order

57. The panel again had regard to the Impairment and Sanctions Guidance last updated on 19 December 2022. Paragraphs 148 and 149 of the guidance assists review panels by reminding them that:

'A removal order must be made where the decision makers conclude that no other outcome would be enough to (do one or more of the following):

- *protect the public;*
- *maintain confidence in the profession;*
- *maintain proper professional standards for social workers in England*

A removal order may be appropriate in cases involving:

- *dishonesty, especially where persistent and/or concealed (see section 'dishonesty');*
- *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 practise as a social worker in the future.'*

58. The panel concluded after careful consideration that in Ms Matshanga's case only a removal order would now sufficiently protect the public in all of the aspects of the overarching objective. Further, although her dishonesty did not immediately and irreversibly point towards a removal order in the circumstances, her persisted-in refusal to engage and to show insight and remediation made that outcome unavoidable now.

59. The panel decided that a removal order should be made with effect from the expiry of the current suspension order. The panel did not identify a pressing reason to make the order immediately effective. Ms Matshanga cannot presently practice and so the public remain fully protected until this order comes into effect at the end of 12 December 2023.

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:

- 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.

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(1 A) of Schedule 2 of The Social Workers Regulations 2018 (as amended), where a social worker appeals against a decision made under subparagraph (1), the decision being appealed takes effect from the date specified in that subparagraph 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 subparagraph (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>