



# Social worker: Mark Birch

## Registration number: SW26206

### Fitness to Practise

### Final Order Review meeting

Date of meeting: 21 May 2025

Meeting venue: Remote meeting

Final order being reviewed: Final Suspension Order expiring 02 July 2025

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:
  - a. originally imposed on 20 December 2023 for a period of 12 months following the consensual disposal process; and
  - b. reviewed and extended by 6 months on 19 November 2024.
2. This review was held remotely.
3. Mr Mark Birch did not attend this review and was not represented.
4. Social Work England was represented by Capsticks LLP and their written submissions are set out within the notice of hearing letter.

| Adjudicators   | Role                      |
|----------------|---------------------------|
| Lesley White   | Chair                     |
| Stella Elliott | Social worker adjudicator |

| Hearings team/Legal adviser | Role                     |
|-----------------------------|--------------------------|
| Jo Cooper                   | Hearings officer         |
| Chiugo Eze                  | Hearings support officer |
| Rachel Birks                | Legal adviser            |

## Service of notice:

5. The panel of adjudicators (the panel) had careful regard to the documents contained in the interim order review hearing service bundle as follows:
  - a. A copy of the notice of interim order review dated 15 April 2025, sent by email to Mr Birch at his email address as it appears on the Social Work England register;
  - b. An extract from the Social Work England Register detailing Mr Birch's registered email address;
  - c. A copy of a signed statement of service, on behalf of Social Work England, confirming that on 15 April 2025 the writer sent Mr Birch by email: "the Notice of Hearing and enclosures".
6. The panel accepted the advice of the legal adviser in relation to service of the notice, as detailed within rules 16, 44 and 45 of the Social Work England (Fitness to Practise) Rules 2019 (as amended) (the rules).
7. Having had regard to the rules and all the information before it in relation to the service of notice, the panel was satisfied that notice of this hearing had been properly served on Mr Birch in accordance with rules 16, 44 and 45.

### Proceeding in the absence of the social worker:

8. The panel considered all the information before it and received advice from the legal adviser who reminded the panel of the following:
  - a. Rule 43 provides that where the registered social worker does not attend a hearing and is not represented, the panel may proceed to determine the matter, if they are satisfied that the registered social worker has been served or all reasonable efforts have been made to serve the registered social worker with notice of the hearing in accordance with the rules.
  - b. The case of *Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34*, confirms that the decision to proceed with a hearing in the absence of a practitioner is a discretion which a panel should exercise with the utmost care and caution. The factors which a panel must bear in mind when deciding whether to exercise their discretion to proceed are those as set out in the case of *R v Jones (Anthony) [2003] AC 1, HL*. These include:
    - i. The nature and circumstances of the Registrant's behaviour in absenting themselves from the hearing;
    - ii. Whether the Registrant has voluntarily absented themselves from the proceedings;
    - iii. Whether an adjournment would resolve the Registrant's absence;
    - iv. If so, the likely length of any such adjournment;
    - v. The disadvantage to the Registrant in not being able to present their case.
  - c. The case of *Adeogba v GMC [2016] EWCA Civ 162* draws a distinction between criminal and disciplinary proceedings in terms of the procedure to be followed when deciding on whether to proceed in the absence of the registrant. A key feature of that judgment is that fairness involves fairness both to the registrant, which is the prime consideration, but also fairness to the regulator and to the public.
9. The panel noted that Mr Birch was sent notice of today's interim order review along with all relevant information over a month ago. The panel noted that there have been various communications from Mr Birch over the last few weeks and, in particular, he has indicated that:
  - a. He has retired and does not intend to practise as a social worker again;
  - b. He would like to be removed from the register and has submitted a voluntary removal application to Social Work England;
  - c. He does not intend to attend this final order review.
10. The panel is satisfied that Mr Birch is aware of the review and has been made aware of the steps that he needs to take if he wants to request an adjournment. No adjournment has been requested by him, and it is clear to the panel that Mr Birch has specifically

waived his right to attend the hearing and wishes for it to proceed in his absence. An adjournment would therefore be highly unlikely to result in Mr Birch attending the review.

11. Mr Birch has had the opportunity to make written submissions, even if not attending, having seen Social Work England's submissions sent on 15 April 2025.
12. The panel noted that this is a mandatory statutory review of a final order imposed to ensure the protection of the public. There is a considerable public interest in it proceeding today, within the required period since the last review, particularly in light of the fact that the interim suspension order expires today. In the interests of a timely review of the suspension order, the panel determined that the review should proceed in Mr Birch's absence.

### Proceeding with the interim order review as a meeting:

13. The panel accepted the advice of the legal adviser regarding 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.'*

14. The notice of interim order review hearing informed Mr Birch that:

*'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 1 May 2025. 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.'*

15. The panel was satisfied that Mr Birch had been informed that, in his absence, the review could proceed as a meeting.
16. The Panel has all the relevant documentation before it. It does not require any clarification from Social Work England. The panel was therefore 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:

17. 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 the rules.
18. The current order is due to expire at the end of 21 May 2025.

## Imposition of final order

### Regulatory concerns and case examiners' decision on facts and grounds:

#### **Regulatory concerns**

19. Case examiners appointed by Social Work England previously determined that there was a realistic prospect that adjudicators would determine that Mr Birch's fitness to practise was impaired on the basis of the following regulatory concerns:

*Whilst registered as a social worker:*

- 1) Between 04/10/2021 to 15/10/2021, you failed to safeguard Child A in that you:*
  - a) Failed to assess the risks around Child A's change of placement*
  - b) Failed to contact Child A's social worker, Social Worker A*
  - c) Failed to consult with or inform a manager about the situation, and*
  - d) Failed to record key information including the Child A's whereabouts.*
  - e) Failed to record your decision making and the rationale underpinning it.*
  - f) Did not take steps to ensure Child A's parents were aware of, and could consent to, Child A being placed in another arrangement.*

*The matters outlined in the above regulatory concerns amount to the statutory ground of misconduct.*

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

#### **Background**

20. On 26 February 2022, Mr Birch's former employer, Dudley Metropolitan Borough Council (the Council) made a referral to Social Work England. The referral contained concerns about Mr Birch's ability, as supervising social worker, to safeguard a young child, who was subject to an interim care order. The young person's foster carer went on holiday, leaving the child in the care of their daughter, who was unknown to the Council. This set off a chain of events in which the Council had to search for the child as their whereabouts had not been recorded. On 27 October 2021, Mr Birch was suspended from his employment with the Council pending further investigations, which resulted in his dismissal.
21. With regard to grounds, the case examiners decided that there was a realistic prospect that adjudicators would find that the relevant statutory ground for the regulatory concerns was misconduct.

### Case examiners' decision on impairment:

22. The case examiners previously made the following decision with regard to impairment:

*'Assessment of impairment consists of two elements:*

1. The personal element, established via an assessment of the risk of repetition.
2. The public element, established through consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession, or in the maintenance of proper standards for social workers.

### **Personal element**

*With regards to the concerns before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration to whether the matters before the regulator are easily remediable, and whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition is highly unlikely.*

*Whether the conduct can be easily remedied: While the alleged conduct could potentially be remedied via further education, training and reflection, the social worker has informed the regulator that they have “officially retired” and that they now can “get on with the rest of my life”. In such circumstances and with these intentions, it would be difficult to see how this type of conduct could be remediated.*

*Insight and remediation: The social worker has developed partial insight in that they largely accept the facts in relation to the employer investigation. However, they actively refute that they would ever ‘knowingly’ place a Child of any age in a situation that would place them at risk of harm. Given that the alleged actions of the social worker may have placed the child at a potential and active risk of harm, this would suggest that the social worker lacks any clear insight. That they would conduct such a series of actions ‘unknowingly’, raises further serious concerns about the social worker’s insight, so suggesting they could be at active risk if they chose to practise. This is compounded by their perceptions of the conduct amounting to a ‘misdemeanour’, so minimising the seriousness of their actions and the potentially damaging effects that this could have caused to Child A. In their initial submissions to the regulator, they perceive that they have been treated with harshness and do not offer any remorse or regret with respect to Child A, their parents, or the difficult position that their employer had been placed in.*

*With respect to remediation, the social worker has offered a number of positive testimonials and there is evidence of a strong record of prior training. However, the case examiners would add little weight to this as effective remediation as this was based on evidence of retrospective practice. It does not address how they would improve their practice in the future, or ensure that such alleged concerns would not happen again. In their limited submissions made to Social Work England, they have offered no remediation, expressing the intention to retire.*

*Risk of repetition: Given the serious concerns expressed by the case examiners with respect to insight and remediation, the case examiners conclude that if the social worker chose to return to unrestricted practice, that the risk of repetition could be high. While it is accepted that they appear to have had a hitherto unblemished career, their*

responses and submissions to Social Work England have done little to reassure the case examiners that the social worker has any interest in enhancing their future practice, to ensure best outcomes for children.

### **Public element**

The case examiners have next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers.

The case examiners are of the opinion that a member of public would be very concerned to learn that a social worker failed to safeguard a one year old child who was subject to statutory provisions of care. The alleged actions of the social worker would have the clear potential to undermine public confidence in the profession. There also appears to be a clear need to reassure the public that proper professional standards are maintained in social work, in order to reassure them that such alleged actions are not repeated.

**The case examiners conclude that there is a realistic prospect of adjudicators making a finding of current impairment, should the regulatory concerns be found proven.'**

## **Case examiners' decision on sanction:**

23. The case examiners previously made the following decision with regard to sanction:

*'The case examiners considered taking no further action but considered that this would not be appropriate in this instance because the case examiners have concluded there may be a continuing risk to the public of the social worker breaching the identified professional standards again.*

*The case examiners next considered whether offering advice or a warning would be sufficient. An advice order will normally set out the steps a social worker should take to address the behaviour that led to the regulatory proceedings. The case examiners believe that issuing advice is not sufficient to mark the seriousness with which they view the alleged misconduct.*

*A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. However, the case examiners are not satisfied that a warning order would send a strong enough message to the social worker, and particularly, the wider social work profession. Furthermore, a warning order is not likely to be appropriate where there is a lack of insight and a risk of repetition.*

*The case examiners then considered a conditions of practice order. The case examiners have concluded that a conditions of practice order is not suitable or workable in this situation. This is because the social worker is not currently practising and has indicated*

*that they have retired. Therefore, there are no workable conditions that could be formulated.*

*The case examiners have gone on to consider a suspension order and have noted the sanctions guidance which indicates that such an order may be appropriate in cases where there has been a serious breach of the professional standards. A suspension order is also appropriate when the decision makers cannot formulate workable conditions and where the case falls short of requiring removal from the register.*

*The case examiners are of the view that this case meets the order requirements, and that in light of the social worker's expression of retirement, a suspension order would also give the social worker time to undertake further reflection on their practice; it would also give an experienced social worker the option of returning to practice via an expression of remediation, should they wish to review their decision and return to practice safely.*

*In considering the duration of the suspension order, the case examiners are mindful of the sanction's guidance, which indicates that whilst an order can be made for up to three years in duration, case examiners need to be mindful of the risk of deskilling a social worker. In this instance, it is unlikely that duration of three years would be appropriate.*

*The case examiners have considered a suspension order of one year duration. The guidance states that a suspension of up to one year may be appropriate if the suspension's aim is primarily to maintain confidence in the profession and ensure that professional standards are observed.*

*The case examiners are of the view that a one-year suspension order provides an opportunity for the social worker to reflect on whether they wish to return to practise and undertake professional development to assist them with their return to practice. This sanction will mark the seriousness of the regulatory concerns. Should the social worker decide that they want to return to practice earlier than this, they are able to request an early review hearing.*

*The case examiners have also considered the option of a removal order. They have given this serious consideration given that the social worker has not expressed a desire to return to practice. However, they consider that a removal order would be overly punitive and that it would not allow an experienced social worker to return to practice, should they change their mind and wish to do so.*

*The case examiners have therefore decided to propose to the social worker a suspension order of one year duration.'*



## Case examiners' recommendations

24. The case examiners previously recommended that, prior to attending any review panel, Mr Birch should provide (i) a reflective piece demonstrating insight into his misconduct and (ii) evidence of remediation in order to ensure that similar concerns do not occur again.

### The final hearing order review panel on 19 November 2024 determined the following with regard to impairment:

*The panel first considered whether Mr Birch's fitness to practise remained impaired in the sense that his misconduct remained a risk to the health, safety and well-being of the public.*

*In that regard, as was implicit from the case examiners' decision, the panel considered that Mr Birch's misconduct had the potential to adversely affect the health, safety and well-being of any young service users in his care.*

*The panel then proceeded to consider whether there remained a risk of Mr Birch's misconduct being repeated in the future. In considering that question, the panel considered, in particular, Mr Birch's previous history and his conduct since the case examiners' decision; the extent to which he had developed insight into his misconduct; and the extent to which he had taken steps to remedy it.*

*In terms of Mr Birch's previous history and his conduct since the case examiners' decision, the panel noted that it had no information to show that he had any previous regulatory findings against him or that his misconduct had been repeated since the case examiners' decision in December 2023. However, the panel did not place any weight on this latter point as Mr Birch had informed the panel that he had retired in September 2023 and, in any event, he had been suspended since December 2023.*

*With regard to insight, the panel had no information before it to demonstrate that Mr Birch had reflected on the seriousness of his misconduct, its actual or potential impact on service users, colleagues, his employer and the social work profession generally. Nor did Mr Birch appear to have reflected on the causes of his misconduct and how he would avoid similar incidents in the future. In particular, Mr Birch had failed to produce a reflective piece, as recommended by the case examiners.*

*Similarly, in terms of remediation, the panel had no evidence that Mr Birch had followed the case examiners' recommendation and engaged in training or some other activity to remedy any failings in his practice which led to the concerns which form the subject of the present fitness to practise proceedings.*

*The panel recognised that Mr Birch's failure to develop insight into, and remedy, his misconduct was most probably due to his retirement from social work. However, the*

*fact remained that there was no evidence before the panel of Mr Birch having developed any insight into his misconduct or of his having taken any steps to remedy it. In the absence of such evidence, the panel concluded that there was a risk of his misconduct being repeated should he be allowed to return to unrestricted practice.*

*Accordingly, given the risks to service users posed by Mr Birch's misconduct, and given the risk of its being repeated, the panel concluded that Mr Birch's fitness to practise remained impaired in terms of the need to protect the health, safety and well-being of the public and, in particular, of any young service users in his care.*

*The panel next considered whether Mr Birch's fitness to practise was impaired in terms of the need to maintain public confidence and proper professional standards. In that regard, the panel noted that the case examiners had considered that a suspension of one year would be sufficient to make public and professional disapproval of Mr Birch's misconduct so as to maintain public confidence and proper professional standards. However, since the case examiners' decision, Mr Birch had failed to develop insight into, and remedy, his misconduct and to produce evidence of such insight and remediation, as recommended by the case examiners. The panel therefore considered that reasonable members of the public who were aware of those circumstances would be surprised and alarmed if Mr Birch were allowed to return to unrestricted practice. Likewise, the panel considered that allowing Mr Birch to return to unrestricted practice in such circumstances would compromise professional standards. Accordingly, the panel concluded that Mr Birch's fitness to practise remained impaired in terms of the need to maintain public confidence and proper professional standards.'*

### **The final hearing order review panel on 19 November 2024 determined the following with regard to sanction:**

*'In terms of sanction, the panel considered the measures available to it in ascending order of severity.*

*As the panel had found that Mr Birch's misconduct still posed a risk to the health, safety and well-being of service users, it did not consider that making a warning order would be appropriate, as that measures would not restrict his ability to practise as a social worker or otherwise manage that risk. For the same reason, the panel did not consider that a warning order would be sufficient to maintain public confidence and proper professional standards.*

*Similarly, the panel did not consider that a conditions of practice order would be appropriate because:*

- Mr Birch's retirement from social work made conditions of practice unworkable.*
- Mr Birch's lack of engagement with the fitness to practice process since the current final suspension order was made and his failure to follow the case*

*examiners' recommendation led the panel to consider that Mr Birch would be unable and/or unwilling to comply with any conditions which it might impose.*

*With regard to the two other measures available to the panel, namely, extending Mr Birch's current suspension or making a removal order, the panel noted that paragraphs 137 and 138 of the Guidance indicated that continuance of a suspension order would be inappropriate in circumstances, such as the present, where the social worker had not demonstrated any insight and remediation and there was limited evidence to suggest they were willing or able to remedy their failings. Likewise, the panel also noted that paragraph 149 of the Guidance stated that two of the circumstances in which a removal order may be appropriate were cases of "persistent lack of insight into the seriousness of their actions or consequences" and cases of "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)".*

*However, the panel also noted from Mr Birch's submissions that retiring with confirmation that he was fit to practise was important to Mr Birch and he indicated that he understood that this would occur automatically once his 12-month suspension had run its course. The panel noted, however, that Social Work England had written to Mr Birch on three occasions (11 January 2024, 24 June 2024 and 2 September 2024) to remind him of the case examiners' recommendations.*

*In the circumstances, the panel considered that the fair and proportionate measure would be to extend the final suspension order by six months so as to give Mr Birch the opportunity to apply to Social Work England for voluntary removal from the Register. Alternatively (and also if his application for voluntary removal were rejected), the extension would allow Mr Birch time to produce evidence of his fitness to practise in the form of a reflective piece demonstrating his insight into his misconduct together with evidence of his undertaking training relevant to the failings in his practice which had led to the current regulatory concerns. The panel considered that such an extension would allow Mr Birch the opportunity of retiring with dignity whilst at the same time protecting the health, safety and well-being of the public and maintaining public confidence and proper professional standards.*

*As mentioned above, any reflective piece should demonstrate that Mr Birch has reflected on the seriousness of his misconduct, its actual or potential impact on service users, colleagues, his employer and the social work profession generally, as well as on the causes of his misconduct and how he would avoid its being repeated if he were still in practice.*

*In the absence of Mr Birch successfully applying for voluntary removal or engaging with the recommendations above, a future panel of adjudicators may decide to make a removal order.'*

## Social Work England submissions:

25. Social Work England provided written submissions as detailed in the notice of review:

*'Subject to any evidence of further insight or remediation received after the notice of hearing is sent, Social Work England invite the panel to impose a Removal Order, on the grounds that such an Order is necessary for the protection of the public.*

*The Social Worker has not made any contact with Social Work England since the Suspension Order was extended at the last review. The Case Review Officer sent correspondence to the Social Worker on 6 January 2025 and 12 March 2025 in relation to the Suspension Order, referring specifically to any evidence the Social Worker may wish to provide in advance of the upcoming review hearing.*

*The previous Review Panel noted a failure on the Social Worker's part to develop insight into, and remedy, his misconduct. However, they concluded that this was most probably due to his retirement from social work. They therefore considered that the fair and proportionate measure would be to extend the final suspension order by six months so as to give the Social Worker the opportunity to apply to Social Work England for voluntary removal from the Register.*

*Alternatively (and also if his application for voluntary removal were rejected), the extension would allow the Social Worker time to produce evidence of his fitness to practise in the form of a reflective piece demonstrating his insight into his misconduct together with evidence of his undertaking training relevant to the failings in his practice which had led to the current regulatory concerns. With that in mind, the Panel considered that the appropriate and proportionate order would be a Suspension Order, as opposed to a Removal Order.*

*At the date of this Notice, the Social Worker has not provided any further evidence to address the concerns the Panel raised, or to engage with the recommendations that were set out for him to address. The risk of repetition has not changed. There is no evidence of the Social Worker's insight, reflection, or remediation.*

*The Social Worker does not appear willing (or able) to satisfactorily address his failings and therefore Social Work England invite the Panel to impose a Removal Order.*

*Social Work England reserve the right to reconsider this position if the Social Worker provides evidence in advance of the Final Order Review.'*

## Social worker submissions:

26. Mr Birch has made an application for voluntary removal but has not put forward any written submissions in relation to impairment or sanction for the panel.

### Voluntary removal application by social worker:

27. The panel noted that it does not have power to consider an application for voluntary removal by a social worker. The panel gave careful consideration as to whether it should adjourn before making a decision in relation to impairment of fitness to practise/sanction in order to facilitate consideration of Mr Birch's application for voluntary removal by Social Work England.
28. The panel noted that if Mr Birch's application was granted, it would permit him to leave the social worker register on his own terms. However, the panel noted that:
- a. There is considerable public interest in it determining impairment/sanction today as the previous suspension order expires today.
  - b. Having considered Social Work England's Voluntary removal guidance it is not guaranteed that the application would be granted. The panel noted, in particular, the following paragraph:

*'...the social worker may dispute (one or both of the following):*

- *the core elements and seriousness of the concerns*
- *that their fitness to practise is impaired*

*This would indicate that there is a dispute about the factual basis of the concerns and/or their seriousness. This would be a factor weighing against granting voluntary removal and would suggest a decision by case examiners and/or adjudicators may be required.'*

The panel noted that notwithstanding the admission of impairment of fitness to practise at the earlier accepted disposal stage, Mr Birch now denies impairment of fitness to practise, without providing any evidence of what has changed since the earlier findings against him.

### Panel decision and reasons on current impairment:

29. The panel first considered whether Mr Birch's fitness to practise remains impaired.
30. In considering the question of current impairment, the panel undertook a comprehensive review of the case examiner's reasoning at the consensual disposal stage and the decision of the previous review panel, in light of the current circumstances. However, it has exercised its own judgment in relation to the question of current impairment. The panel also took into account Social Work England's 'Impairment and sanctions guidance'.
31. The panel had regard to all the documentation before it, including the decision and reasons of the case examiners at the consensual disposal stage, the decision of the previous review panel, and the up to date position. The panel took account of the written submissions on behalf of Social Work England and the documented detail from the interactions Social Work England has had with Mr Birch.

32. The panel heard and accepted the advice of the legal adviser which included that:

- a. In practical terms there is a persuasive burden on Mr Birch at this review to demonstrate that he has fully acknowledged and addressed the past impairment;
- b. The panel must determine whether Mr Birch's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

33. 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.

34. The panel noted the wording of the decision of the previous review panel in which they indicated that a six month suspension *would*:

*'... give Mr Birch the opportunity to apply to Social Work England for voluntary removal from the Register. Alternatively (and also if his application for voluntary removal were rejected), the extension would allow Mr Birch time to produce evidence of his fitness to practise in the form of a reflective piece demonstrating his insight into his misconduct together with evidence of his undertaking training relevant to the failings in his practice which had led to the current regulatory concerns. The panel considered that such an extension would allow Mr Birch the opportunity of retiring with dignity whilst at the same time protecting the health, safety and well-being of the public and maintaining public confidence and proper professional standards.*

35. Notwithstanding that previous determination Mr Birch:

- a. Has not made any contact with Social Work England between the date of the review of his suspension order on 19 November 2024 and 14 April 2025 when Social Work England contacted him by telephone.
- b. Indicated to Social Work England by email on 16 April 2025 that: *"I was unaware that I could make a voluntary request for my registration to be removed; so in light of that I respectfully request that my name is now removed from the register"*, suggesting he had not previously read the determination of the final order review panel from 19 November 2024;
- c. Did not apply for voluntary removal until 17 April, just five weeks before the expiry of his suspension order and after the service of the notice of final order review hearing, and in which he now indicates that he disputes that his fitness to practise is impaired;



- d. Has not submitted a reflective piece into his misconduct with evidence of training having been undertaking training relevant to the failings in his practice.

36. *The panel noted the determination from the previous final order review in which the panel said:*

*'The panel recognised that Mr Birch's failure to develop insight into, and remedy, his misconduct was most probably due to his retirement from social work. However, the fact remained that there was no evidence before the panel of Mr Birch having developed any insight into his misconduct or of his having taken any steps to remedy it. In the absence of such evidence, the panel concluded that there was a risk of his misconduct being repeated should he be allowed to return to unrestricted practice...*

*...The panel therefore considered that reasonable members of the public who were aware of those circumstances would be surprised and alarmed if Mr Birch were allowed to return to unrestricted practice. Likewise, the panel considered that allowing Mr Birch to return to unrestricted practice in such circumstances would compromise professional standards. Accordingly, the panel concluded that Mr Birch's fitness to practise remained impaired in terms of the need to maintain public confidence and proper professional standards'*

37. There is a persuasive burden on Mr Birch to demonstrate that he is no longer impaired and there is no evidence provided to the panel to discharge that persuasive burden. The position in relation to impairment of fitness to practise remains the same as at the time of the previous review six months ago. The panel concluded that Mr Birch's fitness to practise remained impaired in terms of the need to maintain public confidence and proper professional standards.

### Decision and reasons:

38. Having found Mr Birch'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. It accepted the advice of the legal adviser. Under Schedule 2, paragraphs 15(1) (a) – (d) of the Regulations the panel can:

- a. with effect from the expiry date of the suspension order extend the period for which the order has effect, provided that the extended period does not exceed three years from the date on which it is extended;
- b. with effect from the expiry date of the suspension order make any order which the original panel could have made provided that the period for which the new order has effect does not exceed three years in total;

- c. revoke the order with effect from the date of the review for the remainder of the period for which it would have had effect.

- 39. The panel considered the submissions made on behalf of Social Work England, that Mr Birch does not appear willing (or able) to satisfactorily address his failings and therefore Social Work England invite the Panel to impose a Removal Order.
- 40. The panel also considered the 'Impairment and sanctions guidance' published by Social Work England.
- 41. The panel was mindful that the purpose of any sanction is not to punish Mr Birch 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 Birch's ' interests with the public interest, and approaching the sanctions in the order in which they are set out in the Impairment and sanctions guidance.

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

#### Warning

- 42. The panel considered whether to impose a warning order.
- 43. The panel noted that this sanction would not restrict Mr Birch's ability to practise and was therefore not appropriate where there is a finding of impairment based on a current risk to public safety. The panel concluded that issuing a warning would be inappropriate and insufficient to meet the public interest.

#### Conditions of practice order

- 44. A conditions of practice order would not be appropriate in circumstances where Mr Birch has retired from practice and has indicated that he does not intend to practise as a social worker in the future. Workable conditions would not be able to be formulated and none have been suggested by Mr Birch.

#### Suspension order

- 45. The panel noted that the previous review panel suspended Mr Birch again, rather than imposing a removal order at the at stage, to enable him to retire with dignity by applying for voluntary removal and/or by providing evidence of remediation. Mr Birch has not taken that opportunity in a timely manner. Whilst a suspension order would prevent Mr Birch from practising during the suspension period, and would therefore protect the public, it would not be in the public interest to keep a social worker on the register for an infinite period in circumstances where they do not wish to practise again and are unable/unwilling to provide evidence of remediation.



### Removal order

46. The panel was satisfied it could consider that a removal order was available to the panel as Mr Birch'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.

47. The panel noted the following paragraph of the Impairment and sanctions guidance:

*149. A removal order may be appropriate in cases involving (any of the following):*

- ...
- *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)*

48. 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 would be appropriate because Mr Birch has had two previous opportunities, following periods of suspension, to provide remediation evidence, and has failed to provide anything on either occasion. It is a proportionate decision in circumstances where he has retired and does not wish to practise as a social worker in the future.

49. The decision is a fair and reasonable one. The panel noted that Mr Birch was warned of this possible outcome by the previous review panel on 19 November 2024, who said in their determination:

*'In the absence of Mr Birch successfully applying for voluntary removal or engaging with the recommendations above, a future panel of adjudicators may decide to make a removal order.'*

50. The panel therefore imposed a removal order to take effect from the expiry of the current period of suspension.

### Right of appeal:

51. 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.
- 52. 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.
- 53. 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.
- 54. This notice is served in accordance with Rules 44 and 45 of the Fitness to Practise Rules 2019 (as amended).

### The Professional Standards Authority

- 55. 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>