



Case Examiner Decision

Ashleigh Lackey – SW108018

FTPS 20298 [REDACTED]

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The role of the case examiners

The case examiners perform a filtering function in the fitness to practise process, and their primary role is to determine whether the case ought to be considered by adjudicators at a formal hearing. The wider purpose of the fitness to practise process is not to discipline the social worker for past conduct, but rather to consider whether the social worker's current fitness to practise might be impaired because of the issues highlighted. In reaching their decisions, case examiners are mindful that Social Work England's primary objective is to protect the public.

Case examiners apply the 'realistic prospect' test. As part of their role, the case examiners will consider whether there is a realistic prospect:

- the facts alleged could be found proven by adjudicators
- adjudicators could find that one of the statutory grounds for impairment is engaged
- adjudicators could find the social worker's fitness to practise is currently impaired

If the case examiners find a realistic prospect of impairment, they consider whether there is a public interest in referring the case to a hearing. If there is no public interest in a hearing, the case examiners can propose an outcome to the social worker. We call this accepted disposal and a case can only be resolved in this way if the social worker agrees with the case examiners' proposal.

Case examiners review cases on the papers only. The case examiners are limited, in that, they are unable to hear and test live evidence, and therefore they are unable to make findings of fact.

Decision summary

Decision summary	
Preliminary outcome	25 April 2024
	(FTPS 20298) Accepted disposal proposed - warning order - 3 years. 
Final outcome	7 August 2024
	(FTPS 20298) accepted disposal – warning order – 3 years

Executive summary

The case examiners are satisfied that there is a realistic prospect that:

1. Regulatory concern 1 could be found proven by the adjudicators.
2. Regulatory concern 1 could amount to the statutory ground of misconduct.
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing as they consider that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with a warning order of 3 years duration. The proposed order was accepted by the social worker.

Anonymity and redaction

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in [REDACTED] will be redacted only from the published copy of the decision and will therefore be shared with the complainant in their copy. Text in [REDACTED] will be redacted from both the complainant's and the published copy of the decision.

Anonymity Key

Child 1 [REDACTED]

Person 1 [REDACTED]
[REDACTED]

Person 2 [REDACTED]

Child 2 [REDACTED]

The complaint and our regulatory concerns

The initial complaint	
The complainant	FTPS-20298 - The complaint was raised by the social worker's former employer, Liverpool City Council, hereafter referred to as 'the council'.
Date the complaint was received	2 February 2022
Complaint summary	Concerns were raised by the social worker's former employer, that the social worker had accessed records they had no professional reason to access. The records they allegedly accessed related to Child 2. (FTPS 20298).

Regulatory concerns / Regulatory concerns and concerns recommended for closure

Whilst registered as a social worker in January 2022 you:

1. Accessed a service user records without authority or professional reason to do so (FTPS-20298).

Grounds of impairment:

The actions outlined at regulatory concern 1 amount to the statutory ground of misconduct.

By reason of your misconduct your fitness to practice is impaired.



Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

The realistic prospect test

Fitness to practise history

The case examiners have been informed that there is no previous fitness to practise history.

Decision summary

Is there a realistic prospect of the adjudicators finding the social worker's fitness to practise is impaired?

Yes



No



The case examiners have determined that there is a realistic prospect of regulatory concern 1 being found proven, that the concern could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker in January 2022 you:

- 1. Accessed a service user records without authority or professional reason to do so (FTPS-20298).**

At the relevant time, the social worker was employed at the council as a consultant social worker.

A complaint was made to the council by Person 1 about the social worker accessing electronic records (Liquid Logic) relating to Person 2 and Child 2, who was receiving social work support.

In the subsequent employer led investigation interview held on 14 February 2022, the social worker accepted '*without hesitation that they had accessed information on Liquid Logic and the Early Help Module,*' when they had no professional reason to do so.

The case examiners have seen a screen shot of the council's opening page to their case recording system, Liquid Logic; this front page reminds staff that they should only access service user's confidential information when they have a legitimate operational reason to do so.

In the letter the council sent to the social worker following their disciplinary hearing, the council confirmed that the IT department had audited the social worker's access to service users' records and found that the social worker had accessed records they had no professional reason to access on 25th January 2022 at 19.35, 28th January 2022 at 21.07 and 23.14 and 28th January 2022 at 21.07 and 23.09.

The case examiners consider there is a realistic prospect that this regulatory concern could be found proven by adjudicators.

Grounds

The case examiners are aware that there is no legal definition of misconduct, but it generally would consist of serious acts or omissions, which suggest a significant departure from what would be expected of the social worker in the circumstances. This can include conduct that takes place in the exercise of professional practice, and also conduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

In respect of regulatory concern 1 the case examiners note the following as significant to their consideration of potential misconduct:

- The social worker allegedly accessed records they had no professional reason to access on multiple occasions. Documents accessed included multiple social care records relating to Child 2, including their initial assessment, single assessment, closure record, referral record, transfer record, CLA record and care planning records. The social worker's rationale for accessing these records was to ascertain whether Person 2 had a child who had been removed from their care as they believed this would raise safeguarding issues in respect of a member of their own family, Child 1.
- The social worker's service manager at the time spoke to Person 2; they reported being 'distraught' that their sensitive personal data had been accessed and they had reason to believe that it may be being shared in the community.
- The local authority investigated a second concern that the social worker used the confidential information obtained from Liquid Logic to enter Person 2's house without their consent. These concerns were investigated but not found proven through local investigation and were referred to the police but taken no further due to lack of evidence. The social worker did acknowledge however that they,

along with a family member, drove to the property and whilst they did not enter the property, their family member went in and left a note.

- The investigation report completed by the local authority states that despite the social worker completing four relevant training courses, they said they did not know they were not able to access records without having a professional reason.

To help them decide if the evidence suggests a significant departure from what would be expected in the circumstances, the case examiners have considered the following standards, which were applicable at the time of the concerns.

Social Work England Professional Standards (2019):

I will:

2.2 Respect and maintain people's dignity and privacy.

2.6 Treat information about people with sensitivity and handle confidential information in line with the law.

I will not:

5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

The case examiners consider that adjudicators are likely to view the social worker's alleged actions as a serious departure from the above professional standards. They are concerned that a social worker employed in a senior position claims, despite significant training in relation to data protection and managing data sensitively and clear warnings incorporated into the IT systems, that they were unaware they could not access confidential information relating to members of the public.

Additionally, the case examiners are concerned that the social worker seems to believe that accessing the records of Child 2 was the only route to ensuring that Child 1 was safe. The case examiners consider that adjudicators would expect an experienced social worker to not only be clear about the inappropriateness of accessing personal records without a professional reason, but also be aware of the options available to them if they had concerns about a child being at risk of harm.

The case examiners are of the view that the social worker's alleged actions would be considered by adjudicators as a significant departure from what would be expected.

Given the above, the case examiners consider that there is a realistic prospect that if regulatory concern 1 was found proven, adjudicators would find the social worker's actions amount to the statutory ground of misconduct.

The case examiners did not progress to consider regulatory concern 2 as they found no realistic prospect of this being found proven.

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.

The case examiners consider that the matters in this case can be remedied through training, mentoring, reflection, and the development of insight.

Insight and remediation

In their submissions and investigative interview, the social worker has put forward some mitigating factors, these include:

- Personal circumstances which left them feeling vulnerable and unsure about Child 1's safety whilst they were in the care of Person's 1 and 2 and led them to accessing Liquid Logic to alleviate these concerns.

Whilst the case examiners have given consideration to the mitigating circumstances outlined above, they consider that the social worker shows little insight into the main issue of concern that they accessed an individual's confidential information without professional reason to do so.

Insight is usually shown by accepting what went wrong and taking steps to ensure that the issue of concern would not be repeated. In this instance, whilst the social worker did immediately accept that they had accessed records without professional reason, their rationale for doing so seems implausible and they have as yet to demonstrate any understanding of how their actions and behaviours might have impacted Person 1, Person 2, and Child 2.

The case examiners cannot see any evidence of remorse or remediation, nor any indication that the social worker recognises the impact of their alleged actions on the wider public, their employer or the profession. In terms of remediation, this is usually evidenced by completion of training courses, however in this instance the social worker had already completed the relevant training but regardless of this went on to access at least one person's confidential data without professional reason for doing so.

Risk of repetition

Given the lack of remediation and insight the case examiners consider that the risk of repetition remains high.

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.

Person 2 told the social worker's service manager they were '*distraught*' that their confidential information had been accessed; they also expressed fears that their private, sensitive information might have been shared within the community. The information accessed by the social worker included information about the care of Person 2's child, which they believed once in the public domain might affect how they were perceived in the local community. A number of documents relating to Child 2 were accessed on a number of occasions and the social worker and a member of their family accessed Person 2's home when they were not present, this is likely to have been very unsettling.

The evidence would suggest that the social worker's actions may very well have caused emotional harm to Person 1 and Person 2 and had the potential to cause emotional harm to Child 2 were they to learn about their personal information having been accessed by someone who had no right to view it.

Despite completing training in the area of General Data Protection Regulation (GDPR) the social worker accessed records of Child 2 saying in their investigation interview they did not know they were not allowed to do this; as previously stated, the case examiners do not find this explanation plausible. Social workers have access to sensitive and confidential information about people receiving services and it is imperative that social workers understand and conform to the regulations in place to keep this data safe and secure. Failure to protect service user's confidential information is likely to erode any trust service users would have in the social work profession and undermine public confidence in social workers. Members of the public are likely to take a dim view of a social worker accessing personal records they have no right to access.

The case examiners consider that the social worker's actions in accessing confidential data without professional reason to do so represents both a departure from the Social Work England Professional Standards and the potential to affect trust and confidence in the social work profession.

Accordingly, the case examiners consider there is a realistic prospect of adjudicators finding the social worker's fitness to practise to be impaired by reason of misconduct.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners have noted that the social worker has not indicated to the regulator whether or not they consider their fitness to practise to be currently impaired.

The case examiners conclude that they can consider an accepted disposal option for the following reasons:

- There is no conflict in evidence in this case and the social worker accepts the facts.
- The case examiners recognise that not all professionals will have an innate understanding of how and when the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.
- The accepted disposal process will provide the social worker an opportunity to review the case examiners reasoning on impairment and reflect on whether they are able to accept a finding of impairment. It is open to the social worker to reject any accepted disposal proposal and request a hearing if they wish to explore the question of impairment in more detail.

- The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

The case examiners note that the guidance states the social worker must accept the matter of impairment at the point of *concluding* the case and are of the view that this does not prevent them offering accepted disposal prior to this.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☐
Proposed duration	3 years	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions guidance and reminded themselves that the purpose of a sanction is not to punish the social worker but to protect the public and the wider public interest. Furthermore, the guidance requires that decision makers select the least severe sanction necessary to protect the public and the wider public interest.

In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available sanctions in ascending order of seriousness. The case examiners considered taking no further action but considered that this would not be appropriate in this instance as it would not satisfy the wider public interest.

The case examiners next considered whether offering advice 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 social worker's conduct.

The case examiners then considered a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order, and the case examiners concluded that a warning order is the appropriate and proportionate outcome in this case; and represents the minimum sanction necessary to uphold the public's confidence.

When considering a warning order, case examiners can direct that a warning order will stay on the social worker's register entry for periods of one, three or five years. According to case examiner guidance, 1 year might be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers; 3 years might be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers; and 5 years might be appropriate for serious cases that have fallen only marginally short of requiring restriction of registration, to maintain confidence in the profession and where it is necessary to send a clear signal about the standards expected.

The case examiners consider that a three-year warning order would be a proportionate response in this instance. The case examiners consider that the concerns capable of proof are serious as they represent a significant departure from the professional standards and present a risk of undermining trust and confidence in the profession. The case examiners have consulted their sanctions guidance which states that a three-year warning order may be appropriate for more serious concerns where the social worker may need more time to demonstrate insight and ensure that they have addressed the risk of repetition. A warning order of 1 year duration is considered to be insufficient in this case because of the seriousness of the concerns and a 5-year order is considered punitive and disproportionate since the alleged misconduct is not so serious that it falls marginally short of requiring restriction of practice.

The case examiners have tested their proposed sanction by considering whether the next available sanction in ascending order, Conditions of Practice, would be more suitable, however, as the social worker is not currently employed this would appear to be unworkable at this time.

The case examiners have decided to propose to the social worker that this matter is dealt with by way of accepted disposal, warning order of three years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 14 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of warning

The case examiners warn the social worker that it is unacceptable to access records of individuals with no professional reason to do so. This behaviour is a serious and

significant departure from the professional standards and likely to undermine trust and confidence in the social work profession.

Any repetition of the behaviour that has led to this fitness to practice concern is likely to lead to a more serious sanction.

Response from the social worker

On 8 April 2024, the social worker signed a document confirming that they admit the key facts and impairment and agreeing to the proposed outcome.

Case examiners' response and final decision

The case examiners have reviewed their decision, paying particular regard to the overarching objective of Social Work England: protection of the public, the maintenance of public confidence in the social work profession and the upholding of professional standards.

The case examiners are satisfied that a warning order of 3 year duration is a fair and proportionate way to address the concerns in this case and is the minimum sanction necessary to protect the public and to satisfy the wider public interest.