

Case Examiner Decision

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FTPS-21456

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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	20 December 2023
	Accepted disposal proposed - warning order (3-years)
Final outcome	19 January 2024
	Accepted disposal - warning order (3-years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concern [REDACTED] 2 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concern 2 being found to amount to the statutory grounds of misconduct. [REDACTED]
[REDACTED]
3. For regulatory concern 2, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is currently impaired.

The case examiners did not consider it to be in the public interest for the matter to be referred to a final hearing and determined that the case could be concluded by way of accepted disposal.

As such, the case examiners requested that the social worker was notified of their intention to resolve the case with a warning of 3-year's duration, subject to the social worker's agreement. The social worker subsequently notified Social Work England that they

accepted the proposed disposal in full, and having reviewed the public interest in relation to this case, the case examiners determined that a warning order of 3 year's duration remained the most appropriate outcome.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

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

In accordance with Social Work England's fitness to practise proceedings and registration appeals publications policy, the case examiners have anonymised the names of individuals to maintain privacy. A schedule of anonymity is provided below for the social worker and complainant, and will be redacted if this decision is published.

Person 1	[REDACTED] social worker making the allegations
Person 2	[REDACTED] social worker
Person 3	[REDACTED] newly qualified social worker
Person 4	[REDACTED] social worker
TM	[REDACTED] another team manager who line managed person 1, from 29 July 2022
SM	[REDACTED] service manager
HOS	[REDACTED] Head of Service

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, Kirklees Council, thereafter referred to as the 'council'
Date the complaint was received	24 August 2022
Complaint summary	The social worker was employed as a team manager within children services, until their resignation from the council in December 2022.
	The regulator raised a separate regulatory concern as the social worker has allegedly failed to provide full current employment details when required to do so.

Regulatory concerns

The regulatory concerns are as follows:



2. Between March 2023 and August 2023, and whilst registered as a social worker, you failed to cooperate with the regulator's fitness to practise investigation in that you did not provide current employer details.

The matters outlined in regulatory concerns 1 and 2 amount to the statutory grounds of misconduct.

Your fitness to practise is impaired by reason of misconduct.

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

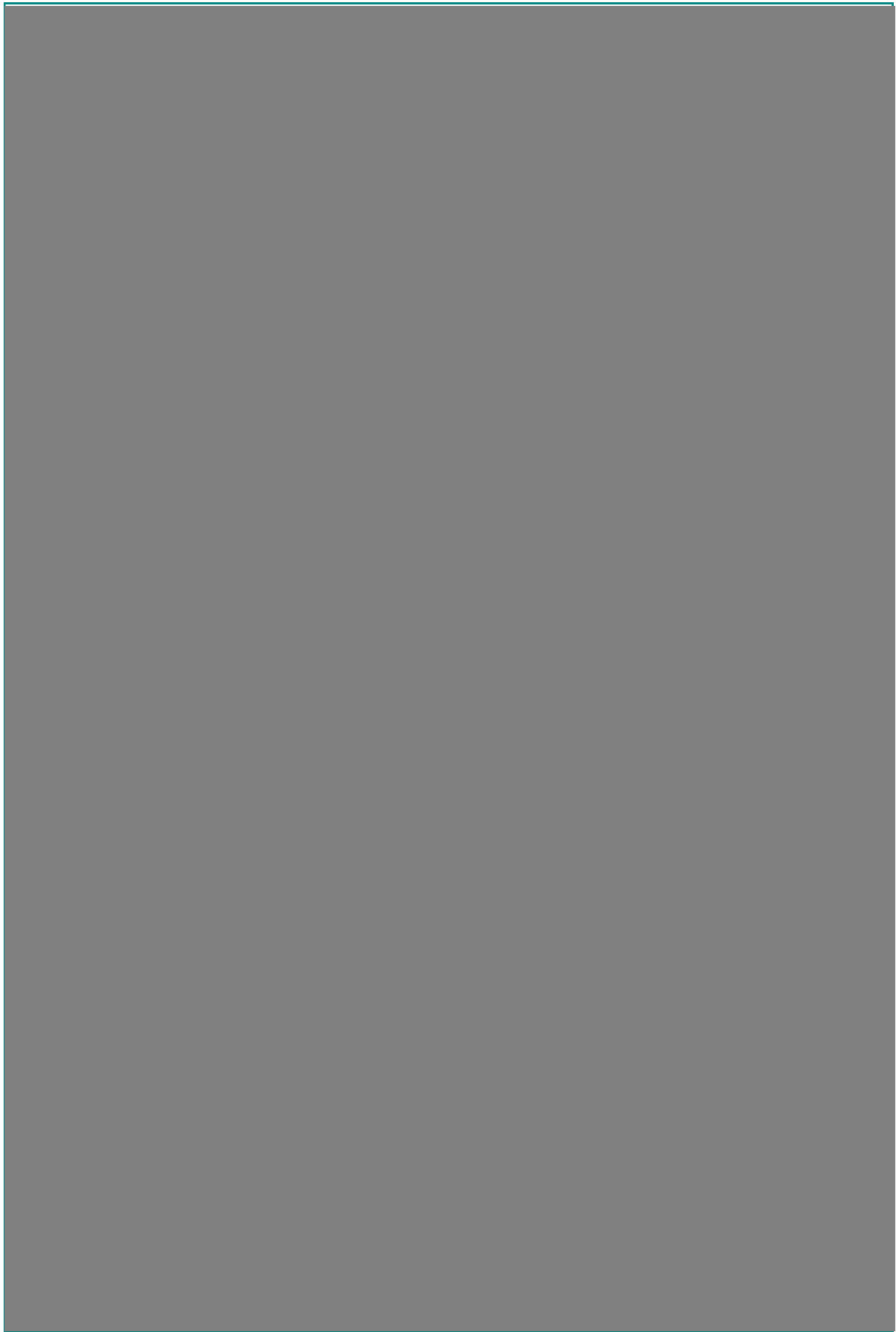


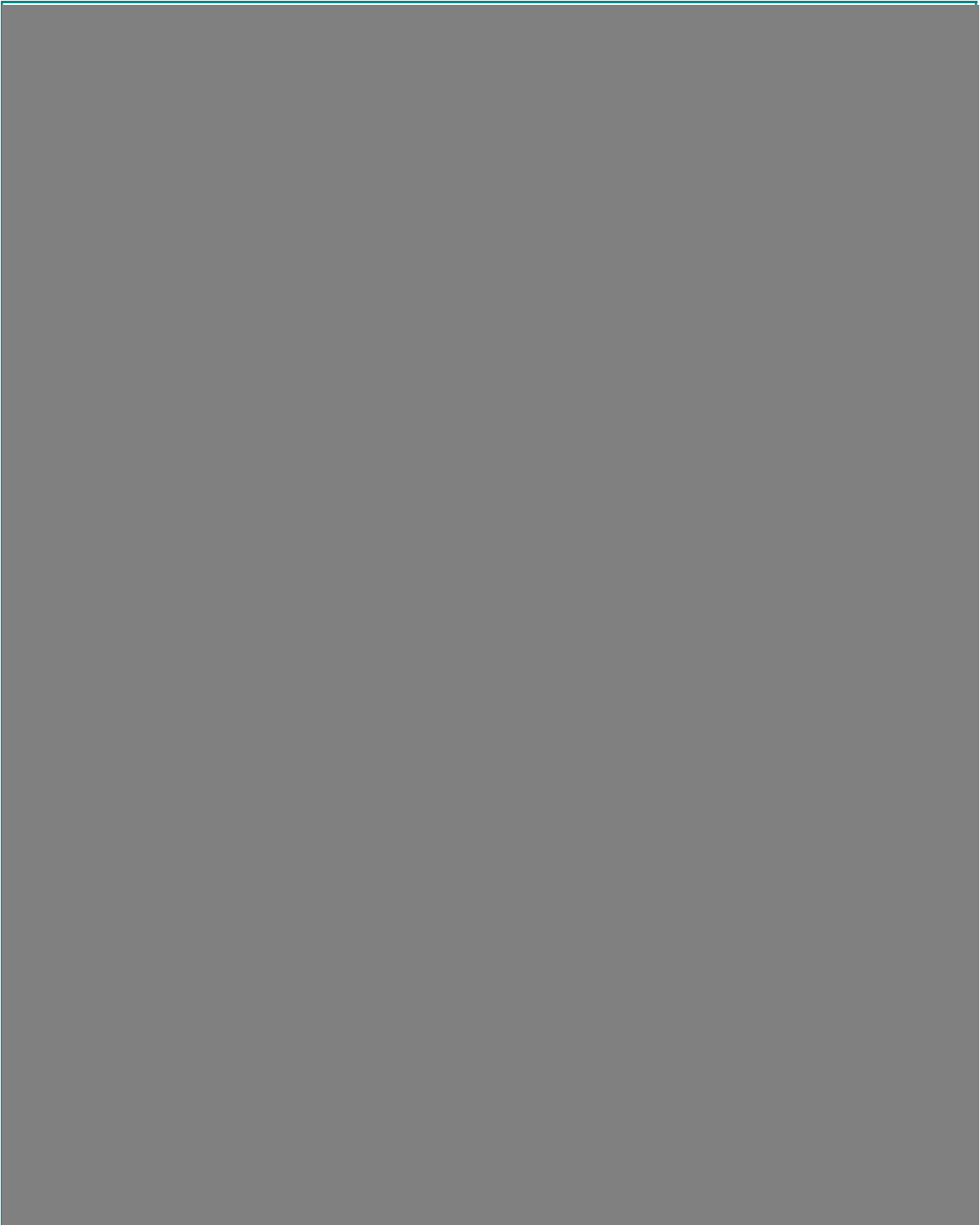
The case examiners have determined that there is a realistic prospect of regulatory concern ████████ being found proven, that regulatory concern 2 could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

The regulatory concerns are as follows:



- 
2. Between March 2023 and August 2023, and whilst registered as a social worker, you failed to cooperate with the regulator's fitness to practise investigation in that you did not provide current employer details.

The case examiners note evidence that the regulator informed the social worker of the fitness to practise investigation by letter, dated 13 March 2023. The letter outlines the legal requirement for the social worker to provide current employer details, including addresses,

within 7 days of receipt of the letter, and also, in line with the legislation informs the social worker that a failure to provide the details “*could result in your suspension or removal from the register and/or a criminal investigation*”.

There is evidence of further email correspondence, dated 4 April 2023 and 27 April 2023, of the investigator requesting the social worker to provide employment contact details.

The social worker denies the regulatory concern. The case examiners have seen a call note, dated 3 May 2023, in which the social worker requested an update on the progress on the case. During the conversation, the investigator reminds the social worker to provide their employer’s contact details; while the social worker advises they will provide them, they also express concern that the employer will be contacted without their knowledge.

A further call note, dated 14 May 2023, records the investigator advising the social worker that they may need to contact the employer for a practise reference, but confirms that the social worker would be informed of this prior to any contact being made with the employer. The social worker had explained that they had just started a new job and was fearful of losing their employment.

The case examiners note that the social worker provided initial comments on the 3 April 2023, in which they inform the regulator that they had commenced employment at Bradford council within a MASH team on 20 March 2023. However, as well as being outside of the required timescale, the social worker did not provide the contact details (i.e., address) as required by the relevant rules. This is confirmed by the investigator within an email, dated 13 December 2023.

Accordingly, there is a realistic prospect of adjudicators finding regulatory concern 2 proven.

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.

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 Social Work England standards, which were applicable at the time of the concerns.

As a social worker,

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.*

I will:

6.7 *Cooperate with any investigations by my employer, Social Work England, or another agency, into my fitness to practise or the fitness to practise of others*

In respect of regulatory concern 2, the case examiners have considered the requirement, and necessity of social workers involved in fitness to practise investigations to provide details as requested in line with the fitness to practise rules, including declaring their current employer details and address within the required timeframe. The case examiners have had sight of the regulator's letter and note that the instructions are clear in that it states, '*Rule 8(b) of the Fitness to Practise Rules 2019, requires that you provide the above information by 20 March 2023. Our Rules also require us to let you know that if we do not receive the above information from you without good reason by 20 March 2023, this could result in your suspension or removal from the register and/or a criminal investigation.*'

Social Work England's overarching objective is the protection of the public and in order to fulfil this objective, the regulator is required to investigate and adjudicate upon anything which may impact upon a social worker's fitness to practise. The regulator's ability to protect the public is hampered if social workers are not transparent, or if there are delays in providing the current social work employer's contact details when specifically requested, in order that the regulator can make relevant enquiries as deemed necessary.

The case examiners have also noted evidence (call note with Social Work England dated 14 March 2023) that the social worker indicated that they were reluctant to provide the requested information, as they had struggled to find work and had only just started a new job. When a previous new employer had been made aware by the local authority of the investigation, this had resulted in them losing their job. The case examiners are of the view that this potentially indicates a specific intention on the part of the social worker to not provide or delay providing details as requested in order to prevent/delay their employer becoming aware of the regulator's investigation.

As such, it is likely that adjudicators would find there has been a breach of the standards outlined above, and that the seriousness test for misconduct has been met.

Therefore, if it were to be found that the social worker had not fully declared their current employer's details as requested in line with the fitness to practise rules, adjudicators may be likely to determine that the social worker had departed from the professional standards expected of them.

In light of the above, for regulatory concern 2, the case examiners are satisfied that there is a realistic prospect of adjudicators determining that the statutory grounds of misconduct are 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.

Whether the conduct can be easily remedied

The case examiners are of the view that failing to cooperate with the regulator's fitness to practise investigation is serious, however, this could be remedied by the social worker demonstrating an understanding of the requirement and the necessity of complying with requests from their regulator, and complying with the fitness to practise rules.

Insight and remediation

The social worker does not accept that they intentionally failed to cooperate with the investigation. While the case examiners are aware that the social worker is entitled to deny the concerns, this can limit the demonstration of insight and remediation provided, unless a social worker is able to indicate why such actions, even if denied, could be concerning, and what steps they have taken or would take to ensure that they did not act in the way alleged.

The case examiners note that the social worker does accept that, during the initial conversations with the investigator, their reluctance to provide full employment details was "*reckless*," but mitigates that they consider that they were not receiving advice or support at the time and that the decision not to do so came from "*a place of fear and anxiety*". They assert that the investigation process has detrimentally impacted upon their health and emotional wellbeing.

While in submissions the social worker apologises "*if it is deemed that I have breached code of conduct. This was never my intention*", the case examiners do not consider there to be good evidence of insight or remediation. While the social worker did provide some details

of their employer two weeks after the required timeframe had passed, these details were scant and did not include an address or any other contact details.

Risk of repetition

The social worker has provided explanations for not fully cooperating with the investigator's requests for information; this suggests to the case examiners that the social worker has not taken full responsibility for their alleged actions.

In the absence of insight and remediation, the case examiners consider that a risk of repetition remains.

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.

Public interest includes the need to uphold proper standards of conduct and behaviour and the need to maintain the public's trust and confidence in the profession.

The case examiners have considered the seriousness of the allegations, and the impact of not complying with a legal request from their regulator.

They consider that the alleged actions have the potential to have a negative impact on trust and confidence in the social work profession, and that a fully informed member of the public would expect a finding of impairment, if the concerns were found proven.

The case examiners conclude that there is a realistic prospect that adjudicators determining that the social worker's fitness to practise is currently impaired.

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 indicated to the regulator that they do not consider their fitness to practise to be currently impaired. Where a social worker does not accept impairment, Case Examiner Guidance (December 2022) suggests that a referral to hearing may be necessary in the public interest. The case examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, they noted the following:

- The social worker accepts the key facts that by not providing full employment details, they did not fully cooperate with the fitness to practise investigation.
- 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 case examiners are of the view that the risk of repetition can be managed, and they have a number of sanctions available to them in order to satisfy the public that this risk is being managed without the need for this to be examined within a public hearing.

- The accepted disposal process will provide to 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.

Interim order

An interim order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒

Accepted disposal

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

Reasoning

The case examiners have taken into account the Sanctions Guidance published by Social Work England. They are reminded that a sanction is not intended to be punitive but may have a punitive effect and have born in mind the principle of proportionality and fairness in determining the appropriate sanction.

The case examiners are also mindful that the purpose of any sanction is to protect the public which includes maintaining public confidence in the profession and Social Work England as its regulator and upholding proper standards of conduct and behaviour.

The case examiners have also taken into account the principle of proportionality by weighing the social worker's interests with the public interest when considering each available sanction in ascending order of severity.

In determining the most appropriate and proportionate outcome in this case, the case examiners have considered the available options in ascending order of seriousness.

No Action or Advice

The case examiners do not consider that taking no further action or giving advice to be sufficient to satisfy the wider public interest. In this case, as the matter is considered to be sufficiently serious and there is a realistic prospect of misconduct being found proven. The case examiners note that the social worker was provided with written information outlining the requirement to provide current employer contact details, including the address, and was specifically asked to do so on a number of occasions by the investigator. Further, they

were advised of the potential consequences of failing to comply with the request made. The social worker partially complied, but only after some delay. As such, there is a potential for this matter to undermine the public's confidence in the social work profession.

Warning

The case examiners went on to consider a warning, which would provide a clearer expression of disapproval of the social worker's. In relation to a warning, the case examiners had regard to paragraph 108 of the guidance, which reads:

A warning order is likely to be appropriate where (all of the following):

- *The fitness to practise issues is isolated or limited*
- *There is a low risk of repetition*
- *The social worker has demonstrated insight*

The case examiners have carefully considered whether issuing a warning is an appropriate and proportionate outcome that would represent the minimum sanction necessary to promote and protect public confidence in the profession. While they have not found the risk of repetition to be low, they have taken into account that the social worker did, albeit two weeks after the request deadline, provide some limited information about their employer which, while not in line with what was required, could have allowed the regulator to research further contact details and make contact if required.

The case examiners are also aware that a warning order should be considered where both following apply

- they cannot formulate any appropriate or proportionate conditions of practice
- a suspension order would be disproportionate

Turning their minds to a conditions of practice order, the case examiners are of the view that given the nature of the concern, which is not directly linked to the social worker's role, a conditions of practice order would not be appropriate.

In relation to a suspension order, the case examiners are of the view that as the public interest in this case is engaged, and in line with case examiner guidance, a suspension order might be required to maintain public confidence. On this occasion, however, the case examiners considered that this would be disproportionate. The social worker did partially engage with the request, albeit not within the required timescales, but nonetheless the case examiners do not consider that their alleged actions warrant a suspension.

Having determined that a warning order is sufficient, the case examiners have next turned their minds to the length of the order. While there is evidence of partial compliance with the request for employer details, there is also evidence that the social worker was repeatedly asked to provide the requisite information, and an indication that the social worker was reluctant to provide it due to the fear of losing their new position, which they had only recently started at the time the fitness to practise concerns were raised. However, the legal expectations requiring this information is clear and that social worker was aware of the need to provide their employer's contact details, which they failed to do.

In this case, the case examiners are satisfied that a warning order of 1 year does not sufficiently reflect the seriousness with which they view the social worker's alleged conduct. Rather, they consider that 3 years meets the primary goal of reminding the social worker and the wider profession of their responsibilities, and to ensure that public confidence is maintained.

Whilst it is essential that the regulator make clear their view that such conduct must not be repeated, in the case examiners' view a warning order of 5-years would be disproportionate. The case has not fallen marginally short of requiring restriction.

To conclude, the case examiners have, therefore, decided to propose to the social worker a warning order of 3 year's 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 the warning

The case examiners warn the social worker as follows:

Failing to fully cooperate with the regulator by not providing employer details, in a timely manner and in line with fitness to practise rules, is serious. The matters as alleged had the potential to adversely impact on the fitness to practise investigation and on the public's confidence in the social worker profession.

The conduct that led to this complaint should not be repeated. Any similar conduct or matters brought to the attention of the regulator are likely to result in a more serious outcome.

The case examiners specifically draw your attention to the following professional standards:

As a social worker, 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.

As a social worker, I will

6.7 Cooperate with any investigations by my employer, Social Work England, or another agency, into my fitness to practise or the fitness to practise of others

This warning will remain published for 3 years.

Response from the social worker

On 17 January 2024, the social worker signed their response form confirming that they had read the case examiners' decision and the accepted disposal guide, understood the terms of proposed disposal of their fitness to practice case, and accepted them in full.

Case examiners' response and final decision

In light of the social worker's acceptance of the proposal, the case examiners have considered again whether there would be a public interest in referring this matter to a public hearing. They remain of the view that this is unnecessary for the reasons set out earlier in the decision.

Having been advised of the social worker's response, the case examiners have again turned their minds as to whether a warning order remains the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of a warning order of 3 year's duration is a fair and proportionate disposal, and is the minimum necessary to protect the public and the wider public interest.

