



Case Examiner Decision Sarah Bray - SW61425 FTPS-20033

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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	15 September 2023
	Accepted disposal proposed - warning order (3 years)
Final outcome	5 October 2023
	Accepted disposal - warning order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1 (1.1 and 1.2) being found proven by the adjudicators. [REDACTED]
2. There is a realistic prospect of regulatory concerns 1 (1.1 and 1.2) being found to amount to the statutory grounds of misconduct.
3. For regulatory concerns 1 (1.1 and 1.2), 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 that the case could be concluded by way of accepted disposal.

As such, the case examiners requested that the social worker be notified of their intention to resolve the case with a warning order of 3 years duration. The social worker returned a completed accepted disposal response form, signed and dated 2 October 2023, confirming their acceptance of the case examiners' proposal.

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 **blue** will be redacted only from the published copy of the decision, and will therefore be shared with the complainant in their copy. Text in **red** will be redacted from both the complainant's and the published copy of the decision.

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.

	
	

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by a fostering agency, which the social worker was formerly registered with as a foster carer.
Date the complaint was received	9 September 2021
Complaint summary	The complainant raised safeguarding concerns in relation to Child A due to the care provided by the social worker whilst employed as a registered foster carer.

Regulatory concerns

Amendments by the case examiners highlighted in bold

While registered as a social worker:

1. You placed **Child A** at risk of harm and/or neglect by:
 - 1.1. Failing to provide **Child A** with sufficient support around **a health condition**
 - 1.2. Introducing **Child A** to your new partners before they were DBS checked

The matters set out in regulatory concern 1 amount to the statutory grounds of misconduct.

Your fitness to practise is impaired by reason of your 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	☐

Requests for further information or submissions, or any other preliminary issues that have arisen
The case examiners have made the following amendments to the regulatory concerns: • Initials for the children have been anonymised • The specifics of Child A's health condition have been highlighted for redaction, and the concern adapted to make clear the nature of the concern in the unredacted copy of this decision The case examiners are satisfied that the amendments they have made are minor, and they therefore considered it to be unnecessary and disproportionate to delay consideration of the case further by seeking additional submissions from the social worker.

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 concerns 1 (1.1 and 1.2) being found proven, that those concerns could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

While registered as a social worker:

1. You placed Child A at risk of harm and/or neglect by:

1.1. Failing to provide Child A with sufficient support around a health condition



Case files reviewed by the case examiners confirm that Child A had a health condition, for which they were prescribed medication in November 2020, which was to be taken daily.

A local foster care agreement, in place with the foster care provider, outlines that it was the responsibility of foster carers to promote the health, welfare and development of children in their care. The case examiners are satisfied that this would encompass ensuring that support is provided for health conditions. In addition, the nature of the health condition was such that it could reasonably cause Child A some discomfort and

social restriction, if left unmanaged. The case examiners therefore consider that it will have been particularly important for the social worker to provide appropriate support to Child A in managing their health.

Documentation relating to the movement of Child A to a new placement in June 2021 suggests that only a very small amount of medication had been taken since November 2020, whilst Child A was in the social worker's care. It is recorded that only 11 tablets had been taken, which is reported to equate to 5 days of medication for Child A over a 6 month period.

The complainant has reported that the first time it was raised that Child A was not taking their medication was in May 2021, and the case examiners noted in records from January 2021, that in discussion around Child A's health there were no concerns raised about the issue. The case examiners consider it likely that by the time of this discussion in January 2021, Child A will have already missed a significant amount of medication doses, given that only 11 tablets appear to have been taken overall. It would appear, therefore, that the social worker ought to have raised concern at this early stage.

In their submissions, the social worker does not dispute that Child A only took 11 tablets, and they state that they fully accept their responsibility in respect of this. The social worker reports that they raised concerns in January 2021, but as outlined above the available evidence does not appear to support this position. The social worker explains that they had tried to encourage Child A to take their medication, but that due to challenging personal circumstances at the time of the placement they may not have done so consistently. The social worker noted also that, in their view, Child A had some personal responsibility in this matter.

In addition to the above, the case examiners also noted that there were relatively consistent concerns about wider support for Child A in managing their health. Specific concerns related to [REDACTED] The social worker's position throughout has been that Child A wished to take personal ownership of such tasks. The case examiners consider, however, that it may have been appropriate for the social worker to have taken a more active role, in the best interests of Child A, especially taking into consideration their age and early life experience.

In the case examiners' view, adjudicators could reasonably conclude that by failing to provide adequate support, Child A was placed at risk of emotional harm. With regards to neglect, the case examiners are guided by the definition outlined in Working Together to Safeguard Children (2018), which requires a persistent failure to meet needs; and includes protecting children from emotional harm, and ensuring access to appropriate medical care or treatment. In the case examiners' view, given the evidence would suggest Child A

did not receive adequate support over a significant number of months, adjudicators may determine that the threshold for neglect is met.

In light of the above, there is a realistic prospect of regulatory concern 1 (1.1) being found proven.

1.2. Introducing Child A to your new partners before they were DBS checked

The case examiners have had sight of case records, which log discussions with the social worker about the need for their partners to be subject to Disclosure and Barring Service checks before they were introduced to Child A. The social worker does not appear to have disputed that these were expected, though they queried whether this was consistent with the wider personal responsibility they were afforded in introducing any other friend. It is evident, however, that in January 2021 the social worker was advised that contact with any new partner would need to be managed at a pace suited to the needs of Child A and Child B, another child placed with the social worker under a special guardianship order. The case examiners consider this to be a sensible and well-founded approach, given Child A's previous experiences, as outlined in the available evidence.

In their reports to the regulator, the complainant has outlined their concerns that two new partners were introduced to Child A before they had been DBS checked. LADO meeting minutes record that the first of the two partners was introduced to Child A in December 2020, prior to their DBS check in January 2021. In a March 2021 case recording available to the case examiners, it is logged that the social worker disclosed that a second new partner had been introduced to Child A, again before DBS checks had been completed.

The social worker does not dispute that both new partners were introduced to Child A before necessary checks were undertaken. They have offered explanation of their position, which will be considered later in this decision.

The case examiners are satisfied that DBS checks were a necessary tool to manage risk, and that adjudicators may therefore consider that by introducing Child A to new partners without those checks having been completed, the social worker placed Child A at risk of harm.

Accordingly, there is a realistic prospect of regulatory concern 1 (1.2) being found proven.

[REDACTED]

[REDACTED]

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 standards, which were applicable at the time of the concerns.

Social Work England – Professional Standards (2019)

As a social worker, I will:

- 3.1 *Work within legal and ethical frameworks, using my professional authority and judgement appropriately*
- 3.3 *Apply my knowledge and skills to address the social care needs of individuals and their families commonly arising from physical and mental ill health, disability, substance misuse, abuse or neglect, to enhance quality of life and wellbeing*
- 3.4 *Recognise the risk indicators of different forms of abuse and neglect and their impact on people, their families and their support networks*

As a social worker, I will not:

- 5.1 *Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.*
- 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 are mindful that foster care does not require social work registration, and that therefore a case could be made that the matters now before the regulator relate to the social worker's private life. However, the case examiners are also conscious that the professional standards extend out into private matters, as set out in standard 5.2, and that there is a significant degree of overlap in the expectations of the social worker as a foster carer, and the expectations of them as a registered professional. This is of

particular relevance to standard 5.1, which outlines that social workers must not neglect others.

In this case, there is compelling evidence to suggest the social worker placed a child at risk of harm and, in respect of support around health, neglected the child's needs. Social workers, by way of their training and qualification, are expected to demonstrate a high standard of understanding of risk, and the need to ensure that children are supported to achieve the best possible outcomes. A failure by a social worker to do so, even in their private life, is therefore of significant concern. The case examiners are therefore satisfied that adjudicators could consider there to have been a significant departure from the standards.

Accordingly, there is a realistic prospect of adjudicators determining that the statutory grounds of misconduct are engaged.

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 satisfied, given the evidence available, for example, the care of Child B, that the conduct in question does not necessarily raise questions about the social worker's character or integrity, and that it could be easily remedied by way of reflection and evidenced consideration of what could and should have been done differently in the circumstances.

Insight and remediation

The case examiners have carefully reviewed the social worker's submissions, along with testimonials provided on their behalf. They have also considered wider documentation, which they consider relevant to the question of repetition.

In the case examiners' view, there is cogent evidence to suggest the social worker has reflected on their conduct, and it is apparent that they accept the concerns now before the regulator. They have made clear that they should have listened to professional advice more carefully, and they have highlighted steps that they could and should have taken to better support Child A and protect them from harm. The case examiners would have welcomed, however, further reflection from the social worker on the potential impact of their conduct on Child A, and the attached risks to public confidence in the social work profession.

The social worker has also offered information about the context within which the concerns in this case arose, and it is evident to the case examiners that the social worker's personal circumstances were impacting upon their ability to care for Child A at the time. The case examiners noted that the social worker was open with their fostering agency about the challenges they were encountering, and it is clear that the social worker outlined in March 2021 that they did not feel Child A's placement could be maintained. The available evidence demonstrates that Child A remained with the social worker for a number of months after, though the reasoning for this (to manage transition to a new placement) would appear sensible. The case examiners recognise, however, that although the extended nature of this transition was likely to be necessary, it will not have been without challenge for the social worker.

Testimonials made available to the case examiners corroborate the social worker's account of their circumstances at the time of the concerns, and comment positively on the social worker's character and the wider nature of their care for Child A. It is also noted that the social worker has reflected with others on their conduct.

Risk of repetition

The case examiners consider the social worker to have engaged in a level of appropriate reflection, though they would have welcomed more detailed consideration of the potential impact on Child A and on public confidence in the social work profession. The

case examiners are satisfied, however, that the social worker is open to engaging further with their personal reflection and development.

Accordingly, though the case examiners consider a risk of repetition to remain, they are satisfied that it has already been substantially reduced.

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.

It is expected of all social workers that they will demonstrate an enhanced understanding of the needs and risks to children. Any suggestion that a social worker has failed to properly recognise or manage such needs and risks is therefore serious.

The case examiners consider that public confidence could be seriously undermined if a finding of impairment was not made, in order to emphasise to the social worker and the profession the importance of demonstrating adherence to the professional standards. It therefore follows that adjudicators may consider a finding of impairment to be necessary in order to maintain public confidence in the social work profession, and in the maintenance of standards for social workers.

Accordingly, there is a realistic prospect of 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' decision making guidance explains that they must refer a case to a public hearing if, in their view, it would be in the public interest to do so. The public interest includes three key limbs:

- protecting, promoting and maintaining the health, safety and wellbeing of the public;
- promoting and maintaining public confidence in social workers in England;
- promoting and maintaining proper professional standards for social workers in England.

In this case, the case examiners have concluded that adjudicators may find the social worker to have demonstrated sufficient insight and remediation to suggest that the risk of repetition has been reduced. The case examiners' assessment of the public interest is, therefore, primarily focused on the second two limbs, which relate to public confidence in

social workers, and the promotion and maintenance of professional standards for social workers.

The case examiners are mindful that the social worker has accepted the key facts in this case, and there are no conflicts in evidence that require resolution at a hearing. However, the case examiners have also concluded that the public interest in this case is engaged.

In considering whether a hearing is therefore necessary in the public interest, the case examiners have reminded themselves that their guidance is clear that, in most cases, the public interest can be satisfied by way of an outcome agreed with the social worker and published on the regulator's website. In the case examiners' view, there is no compelling reason to depart from the guidance in this case.

Accordingly, the case examiners consider 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 social workers adhering to the professional standards expected of them.

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

The case examiners have considered the available sanctions, starting with the least severe. They are mindful that the purpose of a sanction is not to punish the social worker, but to protect the public and the wider public interest; and that it is expected that the sanction imposed is the least severe sanction necessary.

The case examiners determine that taking no further action was not appropriate in this case. Taking no further action is not sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct and would fail to safeguard the wider public interest.

The case examiners have next considered whether offering advice would be sufficient in this case. 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 consider that whilst they could offer advice to prevent this situation arising again, this would not be sufficient to mark the seriousness with which they viewed the social worker's alleged conduct.

The case examiners went on to consider a warning order, which would provide a clearer expression of disapproval of the social worker's conduct than an advice order. The case examiners conclude that a warning order is the most appropriate and proportionate outcome in this case and represents the minimum sanction necessary to adequately address the public's confidence in the profession.

In reaching this conclusion, the case examiners are satisfied that although they have identified a risk of repetition, they also considered that the risk has already been substantially reduced. The case examiners consider that the social worker is able and willing to undertake further reflection and, in the circumstances, oversight by the regulator by way of a conditions of practice or suspension order would be disproportionate. Therefore, the case examiners consider that restrictive sanction is not required in order to secure the safety of the public. Instead, the primary purpose of any outcome would be to safeguard public confidence, and to remind the social worker and the profession of the professional standards. The case examiners are satisfied that a warning order would be sufficient to achieve this objective.

The case examiners therefore moved on to consider the length of the warning order, with reference to the regulator's sanctions guidance. Warning orders can be imposed for 1, 3 or 5 years. The case examiners are satisfied that in this case, a 1 year warning order would be insufficient to mark the severity of the conduct in question. In considering whether a 3 or 5 year order would therefore be appropriate, the case examiners referred to the sanctions guidance, which states that a 3 year order is appropriate for serious concerns, and a 5 year order may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. In the case examiners' view, though they have considered the possibility of a restrictive sanction, such orders would be disproportionate, and therefore the matter has not fallen only marginally short of requiring restriction to practice. The case examiners are satisfied that a 3 year order is therefore sufficient, to help to maintain public confidence and highlight the professional standards.

The case examiners have decided to propose to the social worker a warning order of 3 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 21 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 formally warn the social worker as follows:

Your conduct in this case represented a serious breach of professional standards, and had the potential to have an adverse impact on public confidence in the social work profession.

The case examiners warn that as a social worker, it is of paramount importance that you conduct yourself professionally, and recognise and take action, should your personal circumstances impact on your ability to fulfil any caring responsibilities, as a parent and/or carer. The case examiners remind the social worker of the following Social Work England professional standards (2019):

As a social worker, I will:

- 3.1 *Work within legal and ethical frameworks, using my professional authority and judgement appropriately*
- 3.3 *Apply my knowledge and skills to address the social care needs of individuals and their families commonly arising from physical and mental ill health, disability, substance misuse, abuse or neglect, to enhance quality of life and wellbeing*
- 3.4 *Recognise the risk indicators of different forms of abuse and neglect and their impact on people, their families and their support networks*

As a social worker, I will not:

- 5.1 *Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.*
- 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 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.

Response from the social worker

The social worker has returned a completed response form, signed and dated 2 October 2023, confirming that they have read the case examiners' decision and that they understand the terms of the proposed disposal and accept them in full.

Case examiners' response and final decision

The case examiners have considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous assessment,

they are satisfied that it remains to be the case that the public interest in this case may be fulfilled through the accepted disposal process.

The case examiners therefore direct that the regulator enact a warning order, with a duration of 3 years.