

Case Examiner Decision
Ana Luisa Torres – SW46539
FTP-69238

Contents

The role of the case examiners.....	3
Decision summary.....	4
The complaint and our regulatory concerns	5
Preliminary issues	8
The realistic prospect test.....	9
The realistic prospect test - grounds	10
The realistic prospect test – current impairment.....	10
Referral to a hearing	15
Accepted disposal	17

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 statutory grounds for impairment is engaged
- adjudicators could find the social worker's fitness to practise is currently impaired

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

Provisional decision	Accepted disposal – Final Order: Warning (5 years)
Final decision	Accepted disposal – Final Order: Warning (5 years)
Date of the final decision	13 April 2021

Executive summary

The case examiners found a realistic prospect of the facts and statutory grounds being established by adjudicators. They also considered there was a realistic prospect of adjudicators making a finding of current impairment. The case examiners did not, however, deem it in the public interest to refer the case to a final hearing. Rather they have asked to social worker to agree that a published warning is placed on her registration for five years, to which she has agreed.

The complaint and our regulatory concerns

The initial complaint

The complainant	The Office for Standards in Education (Ofsted)
Date the complaint was received	13 June 2018
Complaint summary	Following an inspection of the fostering agency for which the social worker was employed (Future Fostering), Ofsted referred several practice concerns regarding to the social work to the body which, at that time, had responsibility for regulating social workers (HCPC).

Regulatory concerns

As a registered Social Worker [SW46539] your fitness to practise is impaired by reason of misconduct and/or lack of competence, in that:

1. In relation to Child A, for who you were the allocated Supervising Social Worker, you:

a) Completed an inadequate placement risk assessment on 17 July 2017, in that:

- i) the strategies used to prevent or minimise risks for self-harm, Child Sexual Exploitation, child absconding and physical assault to others was noted as weak
- ii) advice was not given for de-escalation strategies
- iii) you did not complete a separate risk assessment for self-harm or absconding
- iv) you did not advise on safety when using online chat rooms

b) On 1 June 2017, you did not adequately consider the relevant risk factors when matching Child A with a Foster Carer in that:

- i) matching was primarily based on language and religion.

ii) the carers' gaps in knowledge and skills were not identified in relation to Child A's complex emotional needs and learning difficulties

c) Did not ensure that the information in the safer care plan on 3 August 2017 was adequately completed, in that:

i) you did not provide sufficient information to guide the carer on how to safeguard Child A

d) Between August 2017 and September 2017, you were informed that Person G found blades in Child A's room. You did not:

i) record this in the risk assessment

ii) record this in the safer care plan

e) Between August 2017 and September 2017, you did not cover Child A's phone use and access to social media in the risk assessment or Safer Care Plan.

f) Between October 2017 and November 2017, Child A was admitted to the hospital on four occasions. You did not:

i) record on the risk assessment that on three occasions Child A made cuts on her arm

ii) record on the risk assessment on the fourth occasion Child A was found intoxicated

g) Between October 2017 and November 2017, Child A was reported missing five times since being placed with Person G. You did not:

i) discuss preventative strategies with the Person G

ii) did not complete a foster carer supervision note between May 2017 and August 2017

h) On 14 November 2017, in your report you did not explore reasons for Person G ending the placement of Child A.

2. In relation to Child B, for who you were the allocated Supervising Social Worker, you:

a) Did not ensure the information recorded by the support worker in the risk assessment dated 5 April 2017 was correctly recorded.

b) Did not keep an adequate record of child outcome reports and/or monitoring of placement.

c) Did not ensure the information recorded by Person 12 in the 'Looked after Child' report was correctly completed for September 2017 and October 2017.

d) Did not complete and/or record 'Looked After Child' reports after June 2017.

3. In relation to Child C and Child D, for who you were the allocated Supervising Social Worker, you did not:

a) Complete care plans.

b) In or around February 2017, you did not adequately consider the relevant risk factors relating to Child C and Child D when matching to suitable foster carers.

c) You did not update the risk assessment or Safer Care Plan to reflect the incidents that occurred on the following dates:

- i. 27.02.2017
- ii. 02.03.2017
- iii. 07.03.2017
- iv. 09.03.2017
- v. 10.03.2017
- vi. 14.03.2017
- vii. 07.12.2017
- viii. 11.12.2017
- ix. 12.12.2017
- x. 13.12.2017
- xi. 19.12.2017
- xii. 21.12.2017

4. Between February 2017 and September 2017, you did not identify incidents of concern and/or recognise the potential harm to the following service users after they had gone missing:

- a) Child A
- b) Child E
- c) Child F
- d) Child G
- e) Child H
- f) Child I
- g) Child J

The matters set out at paragraph 1-4 above amount to misconduct and/or lack of competence or capability. By reason of your misconduct and/or lack of competence or capability, your fitness to practise as a Social Worker is impaired.

Preliminary issues

Conflicts of interest

Declaration: *I am not aware of any material conflicts of interest that could impact upon my consideration of this case.*

Lay case examiner

Oliver Carr

Professional case examiner

Kay Blower

Requests for further information or submissions, or any other preliminary issues that have arisen

Reasonable opportunity to comment

The case examiners are satisfied that the social worker in this case has been notified of the grounds for investigating whether their fitness to practise is impaired and has been provided with a reasonable opportunity to make written representations to Social Work England.

'Fair and Just Disposal' policy

This case was previously considered by Social Work England's predecessor, the Health and Care Professionals Council (HCPC). On 22 November 2019, the HCPC's Investigating Committee Panel (ICP) determined that, in relation to allegations 1-4, the social worker had a 'case to answer' and therefore the matter should be referred to the HCPC's Conduct and Competence Committee. The matter had not however come before that committee as of 02 December 2019 when Social Work England assumed responsibility for the regulation of all social workers in England.

The matter has now been passed to the case examiners in accordance with Part 4 of the Children and Social Work Act 2017 (Transitional and Saving Provisions - Social Workers) Regulations 2019. The case examiners are aware that Part 4, in effect, permits them to look afresh at the social worker's fitness to practise, applying the current statutory framework operated by Social Work England.

Their deliberations on this matter will include consideration of any new evidence that has been obtained since the ICP made its decision.

The realistic prospect test - facts

Is there a realistic prospect of the facts being found proven?

Allegations 1-4

The case examiners have had regard to the ICP's decision of 22 November 2019; they have also considered the evidence bundle that was made available to the ICP, as well as evidence that has been obtained by lawyers acting for Social Work England, since the ICP made its decision.

With regards to the factual basis of this case, the ICP concluded:

"The Registrant is alleged to have failed to adequately and appropriately carry out risk assessments, demonstrated a lack of thoroughness in matching children with foster carers, failed to recognise the harm children were exposed to when going missing and often failed to update incident in risk assessments and safer care plans.

After reviewing all the information provided by the HCPC and the Registrant, the Panel has concluded that there is a realistic prospect of proving the facts of the Allegation[s]."

Having had regard to the relevant evidence, the case examiners see no need for them to revisit this aspect of the decision-making process; they agree with the IPC's determination, that there is a realistic prospect for the factual basis for this case being established by adjudicators.

The realistic prospect test - grounds

For the facts that have passed the realistic prospect test, is there a realistic prospect that they could amount to the statutory ground(s) for impairment?

In respect of statutory grounds, the ICP concluded as follows:

“The Panel noted that the Registrant is alleged to have failed to adequately and appropriately carry out risk assessments, demonstrated a lack of thoroughness in matching children with foster carers, failed to recognise the harm children were exposed to when going missing and often failed to update incidents in risk assessments and safer care plans.

The Panel considered that the alleged failures are serious, were repeated over a period of time and related to a number of foster carers and also highly vulnerable service users who were at risk. The Panel therefore concluded that there is a realistic prospect of establishing that the facts set out in the Allegation[s] would amount to the statutory grounds of misconduct and/ or lack of competence.”

Again, the case examiners saw no need to reconsider this aspect of the ICP’s decision as they concur with the ICP, in that, should the factual basis for this case be proven, there is a realistic prospect of both statutory grounds being established.

The case examiners wish to clarify, however, given the number of service users to whom these allegations relate, the case appears to provide a *‘fair sample of the social worker’s practice over a fair period of time’*, which is what adjudicators would need to establish when finding a *‘lack of competence or capability’*.

The realistic prospect test – current impairment

Fitness to practise history

The case examiners have not been made aware of any previous fitness to practise history regarding the social worker.

Is there a realistic prospect that, if the case were to proceed to a hearing, the adjudicators might find the social worker's fitness to practise is currently impaired?

Given the time that has lapsed since the ICP made its decision, and also due to the additional remedial work undertaken by the social worker, the case examiners have decided to make a fresh assessment of whether there is a realistic prospect of showing the social worker is currently impaired.

The case examiners are aware the current impairment test has two strands: the personal and the public. The case examiners will assess each in turn.

Personal

Insight and remorse

In an updated statement, provided to lawyers acting on behalf of Social Work England, the social worker states as follows:

"I accept the following happened: (a) Failure to appropriately and adequately carry out risk assessments; (b) Failure to consider risk factors when matching children with foster carers; (c) Failure to notify OFSTED / take appropriate [action] when a child had absconded on numerous dates; (d) Failure to update relevant reports/ care plans/ risk assessments."

Somewhat inconsistently, however, she goes on to say: *"While I was with Future Fostering, I was appreciated for my commitment and support that I offered to my foster carers and now I am surprised to see Fitness to Practise concern[s] raised by HCPC."*

The social worker seems to point towards systemic failures within Future Fostering as being the main cause of the deficiencies alleged in this case. Specifically, she states:

- Another member of staff was responsible for managing risk factors when pairing children with foster carers.
- There were few opportunities provided for training and development.
- There was no software to assist record-keeping and in which to record risk-assessments.
- The lack of case management software made it hard to produce evidential documents while being audited by Ofsted.

The case examiners have been provided with the Ofsted report into Future Fostering; the content of the report seems to lend weight to the social worker's explanation that there were systemic issues within the agency.

Nevertheless, while the social worker says she accepts the practice issues that have been identified, she has demonstrated little insight into the serious implications for service users, and the potential damage generated to the reputation of the wider profession. While the social worker may have experienced a lack of training and support from her colleagues, this did not exculpate her responsibilities as a social worker to safeguard vulnerable individuals. She has not readily identified as such in her submissions.

It seems possible, therefore, that adjudicators may observe that while the social worker has admitted past failings in her practice, her insight is only partial.

Remediation

It would seem, following a succession of highly critical Ofsted inspections, the Future Fostering agency was dissolved in February 2018, at which point the social worker began working for a new fostering agency, where she has worked ever since.

A copy of the social worker's current job description has been provided to the case examiners. The case examiners note that her responsibilities in her new role are largely the same as her duties at Future Fostering. Moreover, the case examiners can see that in her current role, she has many of the same practice responsibilities as those that are referred to in the allegations in this case. The social worker reports that since she joined the new fostering agency in 2018, she has been nominated on more than one occasion for 'star of the month', which purportedly relates to outstanding performance, hard work and commitment.

In order to assess the social worker's current level of practice, an employment reference was provided on 29 October 2020 by her current manager.

The manager states the social worker is an organised practitioner, whose record keeping is mainly up-to-date, and that she shares safeguarding concerns with colleagues, when appropriate. The manager confirms the social worker is regularly involved in completing risk assessments; however, the manager states the social worker *"...tends to miss out on details and continues to require a level of support and guidance in developing in-depth action plan[s]."*

The manager refers to one complaint being received about the social worker; however, the circumstances are not thematically similar to those present in this case. The manager also says the incident was not deemed sufficiently serious to require further action.

The manager states the agency has received no other complaints regarding the social worker, and in the manager's view, the social worker is currently fit to practise social work.

Lastly, the social worker has provided a list of the courses she has attended while being employed by the new agency, accompanied by certificates of completion. The case examiners note the following which are of specific relevance to this case:

- Safer Care and Allegations – Advanced Level Fostering (2018)
- Child Protection Fostering (2018)
- Analytical Skills (2018)
- Safeguarding and Child Protection (2018)
- Risk Management and Safer Caring (2020)
- Safeguarding including CSE CCE (2020)
- Managing allegations and monitoring standards of care in foster care for social workers (2020)

In addition, the social worker has completed training relating to specific risks faced by children and young people who go missing from their foster placements; for instance: county lines, extremism, and sexual exploitation.

Risk of repetition

The case examiners have identified a what may be a lack of insight on the part of the social worker, which would usually suggest there is a risk of repetition.

On the other hand, the social worker has provided evidence of significant remediation, and appears to have practised in a very similar role since 2018 without any significant incidents arising. What is more, it seems her manager is fully aware of the 2017 allegations and continues to provide close oversight through monthly supervision.

Notwithstanding the social worker's partial insight into the matters occurring in 2017, due to the time that has passed without further incident; the supervisory measures in place, and the remedial work that has been undertaken, the case examiners believe the risk of repetition can be classified as 'low'. The manager has cited some ongoing concerns about the level of detail in action plans, however this matter is also subject to active management supervision which mitigates risk.

Public

Risk to the public

The case examiners are aware that children and young people who are in foster care can be some of the most vulnerable in our society. Any failures on the part of those working with this group could lead to significant harm and have the potential to detrimentally impact on the life opportunities of the children and young people. In this particular case, however, the case examiners feel that sufficient measures are in place to mean the social worker does not currently pose any significant risk to the public.

Upholding standards and maintaining the public interest

A member of the public would expect that individuals in need of social service involvement – in particular, young people subject to child protection and foster care arrangements – are amply protected by the professionals who are employed to support them. As such, the case examiners feel it is reasonable to assume the social worker's alleged failings would be of great concern to the wider public and have a potential to damage the reputation of the wider social work profession. It seems likely therefore that a finding of impairment may be necessary to declare and uphold standards within the social work profession.

In summary, the case examiners have determined there is a realistic prospect of adjudicators making a finding of current impairment.

Referral to a hearing

Is there a public interest in referring the concerns to a hearing?

Having established there is a realistic prospect of finding current impairment, the case examiners must turn their minds to whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators.

Admission of the facts

The case examiners are mindful of their guidance, which states that where a social worker disagrees with the factual basis for a case against them, it will be usual that the case is referred to a full hearing for consideration by adjudicators.

In this matter, the social worker's submissions do not engage with the specific circumstances that led to the allegations being raised by the HCPC; however, she does appear to accept that her practice fell short when employed by Future Fostering. These inadequacies, however, she mainly attributes to poor management supervision and inadequate training.

Notwithstanding her lack of reflection on the specific incidents, the social worker appears to have been open and honest with her new employers regarding her training needs and, through attending regular training and development, and engaging with management supervision, has shown a desire to improve her practice. Consequently, the case examiners do not believe this is a case where the social worker fundamentally disagrees with the basis for the case, and therefore they do not think a referral to a hearing is required on this ground.

If there are gaps in the social worker's insight, such as a need to reflect on her own part in the alleged failings, the case examiners believe this insight can be achieved by one of the accepted disposal options open to them.

Risk to public safety and removal from register

The case examiners have identified a risk to the public that would be caused by an inability to: evaluate and act on risk; identify harm; complete accurate case records – all within the context of supporting children and young people in foster care.

Through her representations, the social worker has demonstrated significant remedial work in relation to these issues. Her current manager appears supportive and cites no concerns about her ability to safely carry out her present role. The case examiners do not

believe this is case, therefore, where adjudicators might seek to remove the social worker from the register in order to protect the public.

These matters are indeed serious as safeguarding vulnerable service users goes to the heart of the social work profession, however, given the context of this specific case and the remedial work undertaken, the case examiners do not believe adjudicators would seek to remove the social worker to uphold public interest.

As there is no realistic prospect of removal, all others available sanctions fall within the ambit of the case examiners, without the requirement for a referral to a formal hearing.

Public confidence and upholding standards

With regards to upholding standards, the case examiners are aware, in the event the social worker agrees to an 'accepted disposal' without a referral to a hearing, their full decision will be published on Social Work England's website, thus fulfilling the public interest and the need for the regulator to declare what is proper conduct. They are aware that their guidance supports this approach in all but the most serious cases.

Both the public and other professionals will be able to see the types of behaviour that are deemed unacceptable. Further, they will be able to see that the regulator will take swift and appropriate action when faced with instances of conduct which purportedly breaches professional standards.

Proportionality

The case examiners are required to act proportionately, and it is their belief that an accepted disposal represents the most proportionate outcome for this case, while also allowing for measures that keep the public protected. They note that these incidents occurred several years ago, and the social worker seems to have practised safely since that time, as has undertaken considerable remediation. Consequently, the case examiners believe that attempting to resolve the matter now represents a fair and proportionate outcome that would be supported by the public.

For the reasons given above, the case examiners have decided it is not in the public interest to refer this matter to a hearing, rather they will attempt to resolve the matter now by offering an accepted disposal.

Accepted disposal

Case outcome

Proposed outcome

Final Order - Warning (5 years)

Reasoning

The case examiners have reminded themselves of their guidance, which states they must select the minimum sanction necessary to protect the public.

They have identified a lack of insight on the part of the social worker, and also an outstanding concern from her manager in relation to the completion of care plans. The case examiners do not, however, believe there is a risk of repetition as the social worker is currently practising within a supportive environment with regular supervision of her work. The case examiners do not therefore believe ongoing oversight of her practice from the regulator is required.

The case examiners have considered the eventuality that the social worker seeks new employment, meaning her new employers are unaware of the historical issue and are not as attuned to the social worker's developmental needs. The case examiners consider that a published warning will serve as an additional measure to protect that public in this regard. It will mean that any future employers will have access to the details of this case and can ensure that appropriate supervisory measures are in place.

The case examiners have considered taking no further action, or offering advice to the social worker, however they feel this would fail to mark the serious nature of the alleged poor practice. The case examiners consider that a warning is a proportionate sanction to the serious nature of the alleged failings, but it also reflects that the social worker seems to have practised safely for several years since these issues were first raised.

The case examiners have next considered the duration of the warning. They have been mindful of the seriousness of what is alleged and the potential impact on the safety of young people in care. Further, due to the outstanding matters in respect of insight and practice, they note this was a case which nearly met the threshold for a restrictive order. All which tends towards a warning of the maximum duration.

The case examiners felt that neither a one nor three-year warning was commensurate to the seriousness and extent of the issues identified. Nor would a shorter warning duration

provide sufficient public protection in the circumstances. In respect of a five-year warning, they note that their guidance states:

“Five years may 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 timeframe presents an extended period over which the social worker must demonstrate that there is no risk of repetition.”

In addition, the case examiners note that giving a five-year warning in this case provides the social worker with ample opportunity to develop the requisite insight into these matters. She is advised to review the 2017 matters with her current manager and reflect on how she personally could have acted differently. Lastly, a five-year warning sends a very clear and strong message to the profession regarding the types of conduct and practice that fall significantly short of requirements and expectations.

The case examiners would like to provide the social worker with 14 days to respond to the offer of an accepted disposal. If the social worker does not agree to his offer, or does not respond, the matter will progress to a final hearing.

Content of the warning

The case examiners were presented with a case which alleged key practice failings in respect of children and young people in foster care, occurring in 2017. These matters were admitted by the social worker, as follows:

- (a) Failure to carry out risk assessments appropriately and adequately.
- (b) Failure to consider risk factors when matching children with foster carers.
- (c) Failure to notify OFSTED / take appropriate action when a child had absconded on numerous dates.
- (d) Failure to update relevant reports/ care plans/ risk assessments.

The above are all essential tenets of social work, and the case examiners warn the social worker that any failings in these areas are likely to put vulnerable service users at significant risk of harm.

The social worker should ensure her practice is underpinned by a reflective approach which is critically explored within supervision and training. The social worker should be proactive

in identifying and undertaking ongoing continuous professional development. Specifically, she should focus on identifying and assessing risk, and formulating comprehensive care and risk management plans as per the employer's policies and procedures.

In relation to the social worker's ongoing practice, any further issues brought to the attention of the case examiners are likely to be dealt with seriously by the regulator.

This warning will appear on the social worker's entry on Social Work England's register for five years.

First response from the social worker

The social worker responded to the case examiners on 20 March 2021. The social worker accepted the offer of a warning order but made representations that the duration of the warning should be two, rather than five years.

The case examiners should make clear that the statutory framework which governs their decision-making process does not allow for them to alter the duration of a sanction once an offer has been made. But in any event, the case examiners remain of the view that a warning order, published for five years, is the appropriate sanction in this particular case.

They would reiterate that they made their decision on sanction based on the following factors:

- Despite evidence of remediation, the social worker's manager has cited an area of practice needing further development.
- The social worker has indicated she is looking to obtain a new job; her new employers may not know her practice history and development needs.
- While occurring in 2017, the allegations in this case are numerous and relate to leaving young people at significant risk of harm.
- In the view of the case examiners, the social worker requires further time to reflect on the public interest in the matters giving rise to the allegations.

The case examiners accept the matter has been under investigation for quite some time, however this is not a factor they can account for when determining the appropriate sanction.

In conclusion, the case examiners request the social worker is re-offered the warning order with a five-year term. She should be given 14 days to respond to this offer.

If the social worker does not agree, or if no response is received, the matter will proceed to a final hearing.

Second response from the social worker and the case examiners' final decision

The social worker responded to the case examiners on 05 April 2021. The social worker accepted the case examiners' proposal in full.

The case examiners have considered again the public interest in this matter. They remain of the view that the public interest is served by the accepted disposal that has been agreed with the social worker, namely a Warning Order lasting five years.

Is there an interim order to be revoked?

No.