

Case Examiner Decision
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FTPS-18135

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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

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

Final outcome	Accepted disposal - warning order - five years
Date of the final decision	18 January 2022

Executive summary

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

1. The factual concerns could be found proven by the adjudicators.
2. Those concerns 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 and 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 five years. The case examiners gave the social worker 21 days to consider and respond to their proposal.

On 4 January 2022, the social worker signed a written declaration confirming that they had read, understood and agreed to the terms of the accepted disposal proposed by the case examiners. The case examiners remain satisfied that it is not in the public interest to refer this matter to a substantive hearing. Their final determination is that this case should be concluded by way of accepted disposal.

The complaint and our regulatory concerns

The initial complaint	
The complainant	self-referral
Date the complaint was received	07/10/2020
Complaint summary	The social worker self-referred to Social Work England. The regulatory concerns are that the social worker did not complete a mental capacity assessment as would have been expected, acted as a guarantor to secure a service user's tenancy, and acted dishonestly when they failed to inform the letting agency that they were not the service user's son. It is further suggested that the social worker did not take appropriate action when the service user did not pay their rent.

Regulatory concerns
1. Between January and July 2020, failed to record your assessment of Service User 1's capacity 2. Failed to maintain professional boundaries with service user 1 (SU-1) in that you: a. On or around 22 May 2020, signed to be the guarantor for SU-1's tenancy b. Allowed the letting agent and landlord to believe you were related to SU-1 3. Your actions at (2b) were dishonest. 4. Failed to take appropriate action when you were informed that SU-1 had not paid their rent The matters outlined in (1), (2), (3) and (4) amount to the statutory ground of misconduct. Your fitness to practise is impaired by reason of your misconduct.

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

The case examiners have amended the regulatory concerns to remove the initials of the service user for confidentiality reasons. They have replaced initials with service user 1 (SU.1). They do not consider this to be a material change which would require them to pause their considerations or seek further submissions from the social worker.

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 concerns **1,2,3,4** being found proven, that those concerns could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

The case examiners have considered all of the evidence made available to them.

1. Between January and July 2020, failed to record your assessment of Service User 1's capacity

The disciplinary investigation report completed by the social worker's employer, confirms that the social worker raised concerns about SU-1's capacity in an email to the service manager on 06.01.2020. The social worker records the need to complete an assessment of mental capacity, however there is no record of the assessment being completed. The social worker acknowledges in their submissions that they failed to complete a mental capacity assessment with SU-1.

The case examiners find a realistic prospect that this regulatory concern would be found proven.

2. Failed to maintain professional boundaries with SU-1 in that you:

a) On or around 22 May 2020, signed to be the guarantor for SU-1's tenancy

b) Allowed the letting agent and landlord to believe you were related to SU-1

The case examiners have seen emails that confirm that the social worker agreed to be the guarantor for SU-1's tenancy and provided his employment details to enable the landlord to complete reference checks.

In submissions the social worker accepts they signed to be the guarantor for SU-1's tenancy. The case examiners have seen the signed document.

The case examiners have seen emails sent from the landlord, in which SU-1 is referred to as the social worker's mother. There is no evidence that the social worker identified himself as SU-1's social worker.

In submissions the social worker says that the landlord and letting agency had presumed the relationship to be that of mother and son. The social worker accepts that they could have done more to challenge this misunderstanding.

The case examiners find a realistic prospect that this regulatory concern would be found proven.

3. Your actions at (2b) were dishonest.

The case examiners are aware of the test outlined by the courts in the case of Ivey, which provides a framework for assessing whether a matter amounts to dishonesty. The test requires adjudicators to assess the state of knowledge of the social worker at the time, and then to consider whether the conduct may be considered dishonest applying the objective standards of ordinary decent members of the public. The case examiners will only assess whether there is a realistic prospect of dishonesty being found, which carries a lower threshold than the test that would be applied by adjudicators.

The employer investigation requested email correspondence between the social worker and the letting agency. The case examiners note that the email correspondence shows that SU-1 was referred to as a relative of the social worker on eight separate occasions, the social worker does not refute this in any of their replies to emails. The social worker in the investigative interview stated that they verbally dismissed suggestions that they were related to SU-1 on several occasions and *'eventually gave up setting the record straight.'* There appears to be no evidence to suggest that the social worker explained their relationship to SU-1 in writing despite there being eight opportunities for them to do so.

Turning their minds to the state of mind of the social worker at the time, the case examiners see that in their investigative interview the social worker speaks of *'trying to expedite discharge'* and get SU-1 *'out as quickly as possible.'* The social worker accepts that they had felt pressure to get SU-1 out of hospital and there was no one else to act as guarantor. The social worker is asked about whether the pressure to discharge SU-1 affected their decision making when agreeing to become a guarantor, and they conclude that it was *'in their thinking.'* The social worker also says in their disciplinary interview that they recall sitting at a table weighing up whether to sign to be SU-1's guarantor or

not. *'He said he knew he shouldn't do it at the time, but obviously did in the end and knew he shouldn't have done it.'*

The case examiners have determined that the social worker did know that they should not have signed to be SU-1's guarantor and that in doing so they crossed professional boundaries.

The social worker in submissions accepts that their actions could be considered to be dishonest and misleading.

Turning their minds to the second part of the test the case examiners consider that an ordinary member of the public would not expect a social worker to sign to be a rent guarantor for a service user and would consider this to be blurring the boundaries of professional conduct.

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

4. Failed to take appropriate action when you were informed that SU SU-1 had not paid their rent

The social worker states in investigative interview that they knew they would be in trouble if they disclosed what they had done and convinced themselves that SU-1 was good with money and would never not pay their rent. The social worker also says they would not have spoken to anyone else in the team as they would not want to implicate them in the actions that they had taken.

In submissions the social worker says that they fully admit they failed to take appropriate action and that they should have informed management of the actions they took.

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

Grounds

The case examiners are asked to consider whether the regulatory concerns capable of being found proven amount to the statutory ground of misconduct.

Misconduct is of two strands:

1. Serious misconduct in exercise of professional practice.

2. Conduct of a morally culpable or otherwise disgraceful kind which may occur outside the course of professional practice, but that could bring disgrace on profession and reputation of profession.

The case examiners consider that both strands of misconduct are applicable.

Having reviewed the evidence the case examiners consider that the social worker did not complete a capacity assessment as would have been expected and crossed professional boundaries in agreeing to be a rent guarantor for a service user. It would appear that the social worker knowingly crossed professional boundaries on two occasions. Firstly, in agreeing to be a rent guarantor and secondly, in not taking the opportunity to disclose to managers what they had done when the service user did not pay their rent and they became liable for this as rent guarantor. There is no evidence to suggest that the social worker took steps to ensure that the landlord and rental company understood their professional relationship with service user SU-1 and as such it would appear that they perpetuated the impression that the social worker was the service user's son. Social workers have a professional duty of candour which requires at a minimum that the social worker inform those affected that something has gone wrong and seek to put this right.

Any finding of dishonesty is likely to threaten public confidence in the profession and in the individual's ability to support vulnerable people sensitively and professionally. The social worker accepts in their investigative interview that they were aware that they had most likely breached professional standards in acting as a service user's rent guarantor but continued to do so anyway. It is an aggravating factor that at the time the concerns arose the social worker was employed at a senior level and supervised social work students.

The case examiners are mindful of the reasons why it is so important for social workers to maintain professional boundaries. There is almost always a power imbalance in the relationship, social workers are seen to hold the key to resources and decisions made about people's lives.

In agreeing to be SU-1's rent guarantor the social worker could be seen to have deceived the rental agency in efforts to speed up the discharge of SU-1 for personal gain which is an additional aggravating factor. They also set a precedence for other service users to expect this kind of support which is improper and unrealistic.

The case examiners consider that the social worker has departed from a number of Social Work England's professional standards including:

2.1 Be open, honest, reliable, and fair.

2.3 Maintain professional relationships with people and ensure that they understand the role of a social worker in their lives.

2.4 Practise in ways that demonstrate empathy, perseverance, authority, professional confidence, and capability, working with people to enable full participation in discussions and decision making.

2.7 Consider where conflicts of interest may arise, declare conflicts as early as possible and agree a course of action.

3.1 Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

3.2 Use information from a range of appropriate sources, including supervision, to inform assessments, to analyse risk, and to make a professional decision.

3.11 Maintain clear, accurate, legible, and up to date records, documenting how I arrive at my decisions.

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 therefore consider that there is a real prospect of these concerns amounting to misconduct.

Impairment

The current impairment test has two limbs:

- i. The personal element
- ii. The public interest element

The personal element

Insight

The social worker self-referred to the regulator. They accept all of the regulatory concerns and current impairment. The social worker appears to now understand the wider implications of their actions and the potential for their actions to have negatively impacted trust and confidence in the profession. The social worker subsequently informed all affected parties of their actions. The social worker states that *'now and in the future if I believe I may have done something incorrect I have and will speak to my management team and discuss this.'*

Whilst the social worker does demonstrate developing insight, they have yet to extend this to consider the potential impact of their actions on SU-1, themselves, the local authority, and their immediate team at the time.

Remorse

The social worker does appear to demonstrate some remorse. They admit that they crossed professional boundaries and say that they knew they should not have done this.

Remediation

The social worker says in their submissions that have had more frequent supervision since the investigation into these matters; they say they have more time for reflection and have trust in their manager which makes for a more supportive environment. The social worker has completed training in the Mental Capacity Act and plan to do more training when it becomes available. The social worker appears to have cooperated with the recommendations from the internal investigation into their conduct and has completed further reading on the Mental Capacity Act to improve their understanding and practise in this area.

The social worker suggests that the recording of their work and their rationale for decision making has improved since the internal investigation into these matters.

Risk of repetition

There is a risk of repetition when the social worker has yet to fully demonstrate that they understand what they have done wrong. The case examiners consider that there is evidence of some consideration of the events that led to the issues of concern but limited consideration of how the social worker might approach things differently in the future, should similar pressures begin to arise for them. Most importantly there is limited consideration of the impact of their actions on SU-1 who appears to have been a vulnerable service user with no support systems and no one to advocate on their behalf. Given the above, the case examiners consider that there is a risk of repetition.

The public Interest element**Risk to public**

Whilst there is no evidence to suggest that SU-1 or other service users were harmed as a result of the social worker's actions, the case examiners consider that whilst there is a risk of repetition, a risk to the public remains. It is particularly concerning that the social worker states in their investigatory interview that they were aware they were likely to be breaching professional standards when they signed to be SU-1's guarantor but proceeded with this regardless.

Departure from standards

The case examiners have detailed in their consideration of the grounds that they consider a number of professional standards have been breached and that these raise questions about the professional conduct of the social worker in respect of service user SU-1.

Trust and confidence in the profession

The case examiner guidance at paragraph 45 suggests that social workers hold privileged positions of trust and as such it is essential to the effective delivery of social work that the public can trust social workers implicitly. Any abuse of trust by a social worker is a serious and unacceptable risk in terms of public protection and confidence in the profession as a whole.

Accordingly, the case examiners have concluded there is a realistic prospect that a finding of current impairment would be made by adjudicators, should the regulatory concerns be found proven

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	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners must now 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. Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website.

The case examiners are aware that their guidance suggests that an abuse of trust is a serious and unacceptable risk in terms of public protection and confidence in the profession. In finding a realistic prospect that the social worker could be found by adjudicators to have acted dishonestly, the case examiners are aware that they must give

careful consideration to whether this can be remediated as dishonesty is a concern that may be indicative of bad character.

The case examiners have taking into consideration the fact that the social worker has begun to undertake remedial work, the concerns relate to one service user and there are positive reports from a current manager.

The case examiners have taken into consideration the social worker's acceptance that the actions they took were wrong and their acceptance that they are currently impaired.

The case examiners have also taken into consideration the significant actions taken by the social worker's employer to address the concerns that have emerged. The social worker has been moved from their practice consultant role into a level 2 social worker post, we are told that this is a permanent role change. The social worker no longer supervises others.

During the investigation the social worker completed two pieces of project work to a high standard according to the Head of Social Care for Adult Mental Health. It would appear that managers are liaising to facilitate a transfer of management oversight and that the social worker is felt to have responded positively to feedback and engaged well with areas identified for further development thus far.

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.

For the reasons stated, the case examiners have decided it is not in the public interest to refer this matter to adjudicators; rather they wrote to the social worker and asked them to agree to dispose of this case without the need for a hearing.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	Five 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 considered an advice order as the least restrictive option available to them, alongside a published decision which addresses public interest. The case examiners deliberated 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 determined that a warning order is more suitable as it send a message to the social worker that a more severe sanction is likely should there be any repetition of the behaviours that have given rise to these concerns. Furthermore, the case examiners considered that a warning order of one or three years would not address the seriousness of the concerns that have been under consideration. Given that the case examiners have found a realistic prospect of dishonesty being found proven they consider this matter serious, having fallen marginally short of requiring restriction to registration

and necessary to send a clear message about the standards expected of social workers. The five-year timeframe ensures that there is an extended period in which the social worker can continue to remediate and ensure there is no risk of repetition.

The case examiners considered whether conditions of practice order were an appropriate sanction, however, they felt that the employer had already put conditions in place to a certain extent.

Accordingly, the case examiners offered the social worker 21 days to respond to their proposal to conclude this matter by way of accepted disposal-warning order five years.

The case examiners have reviewed their decision following the social worker's confirmation that they agree to their proposal. They remain satisfied that it is not in the public interest to refer this matter to a substantive hearing. Their final determination is that this case should be concluded by way of accepted disposal.

Content of the warning

The case examiners warn the social worker as follows:

- You must ensure that your conduct is professional at all times, as any repetition of the behaviours that have given rise to these regulatory concerns is likely to result in a more severe sanction.

Response from the social worker

On 4 January 2022, the social worker signed a document confirming that they had read, understood and agreed to the proposal to deal with this matter by way of accepted disposal warning order-5 years.

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 upholding professional standards. The case examiners are satisfied that an accepted disposal (warning) is a fair and proportionate way to address the concerns and is the minimum necessary to protect the public and satisfy the wider public interest.