



Case Examiner Decision

Caroline Kennerley – SW46897

FTP-71714

Contents

The role of the case examiners.....	3
Decision summary.....	4
Preliminary issues	6
The realistic prospect test.....	7
The public interest	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 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	
Preliminary outcome	Accepted disposal proposed - warning order – 5 years
Final outcome	Accepted disposal – warning order – 5 years
Date of the final decision	31 May 2022

Executive summary

The case examiners are satisfied 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 that the case can be concluded by way of accepted disposal.

The case examiners notified the social worker of their intention to resolve the case with a warning order of 5 years. The social worker was informed that if they did not agree to this proposal or, if the case examiners, upon review of the case, decided that it is was in the public interest, the case would be referred to a hearing.

On 24 May 2022, the case examiners were informed that the social worker had accepted the proposed outcome of a 5 year warning order.

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.

The complaint and our regulatory concerns

The initial complaint

The complainant	The social worker made a self-referral to the HCPC following suspension by their employer.
Date the complaint was received	17 June 2019
Complaint summary	The allegations concern postings made by the social worker on their personal Facebook page which could be considered racist and/or offensive.

Regulatory concerns

1. Whilst registered as a social worker, in May 2019, you made postings on your personal Facebook page which could be considered racist and/ or offensive.

Your actions at (1) amount to the statutory ground 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	☐

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 the regulatory concern being found proven, that the concern could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

- 1. Whilst registered as a social worker, in May 2019, you made postings on your personal Facebook page which could be considered racist and/ or offensive.**

The case examiners have reviewed the following:

- Record of a disciplinary hearing on 8 July 2019, following an internal investigation into allegations that the social worker posted offensive images on their Facebook page. It was recorded that: *'[The social worker] confirmed during [their] interview that the posts [they]shared on Facebook could be perceived as offensive.'*
- Screenshots of a large number of posts made by the social worker on their Facebook page during a two-week period in May 2019. These were obtained during the employer's internal investigation under the disciplinary and dismissal procedure. The post which resulted in a complaint and triggered the investigation was of a picture of a golliwog with the caption *"I want to go on tour, how far will I get before being taken off Facebook?"*

- Posts made by the social worker which were sexually explicit, and others with offensive images and text in reference to a range of issues including: gender identity, death by suicide and religious icons.
- A team briefing note dated 11 January 2019 to advise of a new social media policy, which the social worker signed to confirm that they had read and agreed to adhere to the policy. The social worker dated their signature as 16 January 09 the case examiners consider this to be an error and should read 2019.
- Posts which indicate the role of the social worker and appear to be negative about the social work profession.

Having reviewed the posts made by the social worker on their Facebook page during May 2019, the case examiners are satisfied that the posts would be considered racist and/or offensive to a reasonable member of the general public.

The social worker accepts the concerns and states in their personal learning statement to the regulator: *"In May 2019, at a time when I was active on social media, I deeply regret that I shared various posts without due regard to the content or the potential impact my actions could have had"*.

The case examiners are satisfied there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.

Grounds

The case examiners must next consider whether, if found proven, the regulatory concern would amount to an allegation of impaired fitness to practise by reason of the statutory ground. The relevant statutory ground in this case is misconduct.

Misconduct

Misconduct can be broken down into two elements:

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 could bring disgrace on the professional and reputation of the profession.

The case examiners note that 'misconduct' denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances.

To help them decide if the evidence suggests a significant departure from professional standards, the case examiners have considered the professional standards which were

applicable at the time of the concern. The alleged conduct alleged occurred when social workers were registered with the Health and Care Professions Council.

Standards of conduct, performance and ethics (2016)

9.1. You must make sure that your conduct justifies the public's trust and confidence in you and your profession.

Standards of proficiency, social workers in England (2017)

Registered social workers in England must:

3.1 understand the need to maintain high standards of personal and professional conduct.

Case examiners have noted the following:

- The evidence suggests that the social worker posted images that would be perceived as offensive during their working day. This conduct is likely be considered by adjudicators as a significant departure from the standards expected of social workers, specifically 9.1 and 3.1. Furthermore the offensive content of the posts may be considered by adjudicators to indicate values and beliefs that do not align with social work values.
- The internal investigation found that the social worker did not act appropriately or professionally or in accordance with their job role as a social worker and the standards set by the professional regulator.
- The social worker submitted a personal learnings statement to Social Work England and stated: *'I was not aware in May 2019, there were no privacy settings on my Facebook account, meaning that any posts shared could be readily viewed by any member of the public'*. The case examiners consider that the fact the social worker shared posts which could be considered deeply offensive is a serious concern, regardless of whether the settings were private or public.
- The range of posts submitted by the social worker indicate a serious lack of judgement and may be perceived to lack tolerance and understanding regarding issues which included: race, gender identity, class, and death by suicide. When asked during the disciplinary investigation, how their posts may be perceived the social worker responded: *'unprofessional, racist, generalists and not politically correct.'*
- Whilst case examiners have not been presented with any evidence to suggest the social worker was discriminatory towards service users or carers in their practice, the Facebook posts would, in the view of the case examiners, bring their judgement

and character into question and result in service users and the public losing confidence in their professional judgement. More specifically, service-users identifying with or belonging to any of the groups referenced in the posts, are likely to experience a negative impact on viewing the images and texts posted by the social worker.

- The evidence indicates that the social worker was unaware of the relevant HCPC standards or the council's revised social media policy. The social worker had signed a briefing note to confirm they had read and agreed to comply with the social media policy. The outcome letter of the disciplinary hearing dated 11 July 2019 notes: *'You also acknowledged that it was a dishonest act, to sign a document stating you had read and understood [the council's] social media policy without actually reading it'.*

The case examiners note that they have only reviewed images on the social worker's Facebook account posted during a two-week period. Whilst the social worker stated that they have now closed their social media account, it is a concern that many more images may have been posted that have not been reviewed. Posting what may be considered as offensive images during working hours and signing a document to acknowledge understanding of a social media policy without reading it, adds to the seriousness of the social worker's alleged conduct.

There is an expectation that social worker's demonstrate high standards of conduct in their personal and professional lives. The case examiners have concluded that the alleged conduct could bring disgrace on the social worker and the reputation of the profession. The alleged conduct is therefore likely to be viewed by adjudicators as serious and a significant departure from the professional standards referenced above.

As such, the case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 1 amounts to misconduct.

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of misconduct, the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment.

The case examiners have reminded themselves that the purpose of regulation is not to punish a social worker for past mistakes. Rather, the regulatory process seeks to establish whether a social worker is safe and fit to practise today and in the future.

In assessing whether there is a realistic prospect that adjudicators may find the social worker's fitness to practise to be impaired, the case examiners have considered the two limbs of the impairment test: the person element and the public interest element.

Personal impairment

The case examiners are of the view that isolated mistakes are unlikely to be repeated if a social worker recognises what went wrong and takes action to make sure it does not happen again. In considering current impairment, the case examiners have considered whether the social worker has demonstrated insight, whether the conduct is remediable and if so, whether the social worker has shown remediation and whether there is a likelihood the matters alleged will be repeated.

The submissions of the social worker consist of a two-page personal learning statement. The case examiners have used this in their consideration of personal impairment.

Insight

- The social worker has focussed on the post involving the golliwog and demonstrated limited insight into the wide range of posts and images which could be considered to be offensive and explicit and relate to issues including race, sexuality, gender identity and suicide.
- The social worker stated that they were shocked when confronted with the seriousness of their actions and stated: *'I now feel able to appreciate the seriousness of sharing this and other posts on social media platforms, (e.g., Facebook) that others may see. This includes a greater understanding of the capacity to cause offence as well as the potential damage my own professional reputation and the reputation of [the council] as my employer.'*
- The social worker states that they were not aware that there were no privacy settings on their Facebook account in May 2019. It is the view of the case examiners that the social worker seems to be minimising the seriousness of the alleged conduct and does not appear to accept personal responsibility for their actions. The social worker has not demonstrated insight into why the posts were inappropriate and offensive, whether they were viewed by the public or not.
- Whilst the evidence from the internal disciplinary investigation suggests that there is no indication the social worker acted out of malice, the posts indicate a significant lack of understanding of the power of images and language shared on their Facebook page.

- The social worker noted that: *'I now recognise that my actions in May 2019, had the potential to raise serious questions about my ability to fulfil my role as a professional social worker with [the council].*
- The social worker's alleged conduct reflects negatively on their character and judgement. The social worker states they have reflected and changed as a result of the investigation. The case examiners consider that the personal learning statement by the social worker does not demonstrate full insight into the broad range of offensive images and posts on Facebook. In focussing on one specific post and their security settings, it appears that the social worker has minimised the extent and seriousness of their alleged conduct.

It is the view of the case examiners that the social worker has demonstrated limited insight into their alleged conduct.

Remediation

- Remediation by the social worker appears to be limited and focussed upon one specific post which triggered the internal investigation.
- The social worker's personal statement reflects the actions they have taken with regard to the post involving the golliwog. They state that they have worked to develop their understanding of a range of issues including race, ethnicity, disadvantage, and discrimination. The social worker stated that they have watched television programmes and spoken to friends who have *"helped them to understand the implications and context of this symbol in today's terms."*
- The social worker stated: *'To enhance my learning and professional development, I have attended courses relating to valuing diversity. I make time for myself to regularly reflect upon my practice and actively look for ways to be the best I can be'.* The case examiners have not had sight of any independent verification of courses attended. The social worker has not indicated how learning from the courses improved their understanding of diversity, inclusion, and discrimination.
- The social worker stated: *'I deeply regret and fully apologise for any hurt or distress that my actions have caused. I have learned a great amount throughout this process about the fundamental importance of always maintaining professional standards.'*
- The case examiners are of the view that the social worker has not been explicit about their learning and the personal learning statement lacks depth and demonstrates a superficial understanding of the issues.

Likelihood of repetition

The social worker stated that: *'I am no longer active on any social media platforms. I recognise the consequences of my actions and I do not intend to put myself in a position whereby my professional integrity can be compromised.'*

The case examiners consider that the social worker has focussed on the personal impact on themselves of any similar allegations of misconduct in the future. The social worker has not considered the potential hurt caused to service users and the impact on the public and the social work profession.

The case examiners acknowledge that the social worker has stated that they have learnt and will not repeat their alleged actions. However, it is the view of the case examiners that the personal learning statement submitted by the social worker demonstrates partial insight and remediation, therefore, it is not possible to have full confidence that the conduct will not be repeated.

Public Interest

The case examiners next considered whether the social worker's actions have the potential to undermine public confidence in social workers and whether this is a case where adjudicators may determine that public interest requires a finding of impairment.

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 take the view that the public would consider posting a range of offensive images and text on Facebook is not the behaviour expected of a social worker. The alleged conduct is likely to be perceived to demonstrate a discriminatory and judgemental attitude, which conflicts with core social work values and has the potential to bring the social work profession into disrepute. Furthermore, they consider that the social worker's alleged conduct may lead the public to question their ability to make decisions in a professional context.

Adjudicators may determine, therefore, that the public would expect a finding of impairment in this case to remind the social worker, the profession, and the public of the expected professional standards. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Accordingly, the case examiners are satisfied there is a realistic prospect of adjudicators making a finding of impairment on public interest grounds.

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

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 satisfied that:

- Whilst the matter is serious, the case examiners do not consider that adjudicators would regard removal from the social work register to be appropriate.

- The publication of this decision will provide the social worker with an opportunity to reflect on and gain full insight into the circumstances of this case.
- The publication of this decision will also highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession.
- The publication of this decision demonstrates that swift and appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession and the regulator.

Lastly, public interest also entails the need for proportionate decision-making. The case examiners consider it is in the public interest to bring this matter to a prompt conclusion, whilst also ensuring the public remains adequately protected.

For the reasons stated, the case examiners have decided it is not in the public interest to refer this matter to adjudicators; rather they will write to the social worker and ask 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 (2019) and reminded themselves that the purpose of sanction is not to punish the social worker but to protect the public and the wider public interest. The case examiners have found a realistic prospect that adjudicators would make a finding of current impairment. They have also reminded themselves of their guidance on sanctions, which states they "<i>must select the least severe sanction necessary to protect the public and the wider public interest.</i>" The case examiners have therefore considered their options in ascending order to determine what is the most appropriate and proportionate sanction. They decided that taking no further action, or giving advice to the social worker, was not appropriate as it would not mark the seriousness with which the regulator views behaviour which significantly departs from the professional standards and can be perceived as offensive. The case examiners decided that a warning would be an appropriate sanction in this case. A warning will provide a clear expression of disapproval of the conduct that led to the regulatory concerns. In determining the duration of the warning, the case examiners considered whether one year, three years or five years would be appropriate. The case examiners consider that the conduct which resulted in the regulatory concerns was not an isolated incident, and one year would not be sufficient to mark the

seriousness and send a message about the professional standards expected of social workers.

The case examiners reviewed the guidance which notes that three years may be appropriate for more serious concerns, to maintain public confidence and allow time for the social worker to demonstrate that they have successfully addressed any risk of repetition. The case examiners consider that this would not send a strong enough message about the standards expected, given the concerns regarding discriminatory attitudes of the social worker and limited insight.

The case examiners considered that a warning of five years was proportionate and appropriate, in order to maintain confidence in the profession and send a clear message about the professional standards expected of social workers. The case examiners consider that the length of the warning order marks the strength of the regulator's disapproval of the social worker's conduct in this case. The period also provides the social worker a significant opportunity to demonstrate they have addressed the risk of repetition.

In line with their guidance, the case examiners considered whether the next sanction in ascending order, a conditions of practice order, would be appropriate in this case. They decided that a conditions of practice order was not appropriate given there are no concerns about the social worker's professional practice. Furthermore, the case examiners consider that it is important to send a message of disapproval about the alleged conduct and the most appropriate way to do this is through a warning.

The case examiners have decided to propose to the social worker a warning order of five - year 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 twenty-eight 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 that they have a duty to ensure their conduct, specifically with regard to the use of social media, remains in line with Social Work England Professional Standards (2019) at all times. It is essential that future communication by the social worker does not include content that may be perceived as racist, discriminatory, or offensive.

In particular, the case examiners highlight the following standards that the social worker must continue to reflect and act upon, to ensure they consistently uphold the standards expected of them:

1. As a social worker, I will promote the rights, strengths and wellbeing of people, families and communities. I will:

1.5 Recognise differences across diverse communities and challenge the impact of disadvantage and discrimination on people and their families and communities.

5. As a social worker, I will act safely, respectfully and with professional integrity. 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.

5.6 Use technology, social media, or other forms of electronic communication unlawfully, unethically, or in a way that brings the profession into disrepute.

This warning will be considered if further fitness to practise referrals are received by Social Work England, particularly if the concerns are similar in nature. The social worker is warned that any further regulatory concerns, if proven, are likely to result in a more serious outcome.

Response from the social worker

On 20 May 2022, the social worker wrote to Social Work England, confirming they had *“read the proposal and agree with the decision with a warning, 5 years”*.

Case examiners’ response and final decision

Having reviewed this matter, the case examiners have concluded that a warning order for a period of 5 years is the appropriate outcome in this case. They are satisfied that a warning order which will remain on the social worker’s registration for 5 years is sufficient to maintain public confidence in the profession and to uphold professional standards.

