

Case Examiners' Decision

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FTPS-19927

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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	
Preliminary outcome	Accepted disposal proposed - warning order three years
Final outcome	Accepted disposal - warning order three years
Date of the preliminary decision	23 November 2022
Date of the final decision	4 January 2023

Executive summary

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

1. The factual concern could be found proven by the adjudicators;
2. The concern 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, subject to the social worker's agreement.

As such, the case examiners notified the social worker of their intention to resolve the case with a warning order of three years duration. The social worker accepted 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.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's employer.
Date the complaint was received	22 November 2021
Complaint summary	On three occasions in October 2021, the social worker allegedly sent confidential information about service users to an unsecured personal email address.

Regulatory concern

The regulatory concern is as follows:

1. Whilst registered as a social worker on or around 27 October 2021, 28 October 2021 and/or 29 October 2021 you sent emails containing confidential information about service users to an unsecured personal email address.

The matters outlined in regulatory concern (1) amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct.

Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

The realistic prospect test

Fitness to practise history

The case examiners have been informed that there is no previous fitness to practise history.

Decision summary

Is there a realistic prospect of the adjudicators finding the social worker's fitness to practise is impaired?

Yes



No



The case examiners have determined that there is a realistic prospect of 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

Whilst registered as a social worker on or around 27 October 2021, 28 October 2021 and/or 29 October 2021 you sent emails containing confidential information about service users to an unsecured personal email address.

The case examiners have had sight of various documentation from the internal investigation which confirms the social worker sent confidential information about service users to their unsecured personal email on the above dates. The outcome of the disciplinary hearing letter of 10 May 2022 sets out the context and details the investigation.

During the internal investigation and in their submissions to Social Work England, the social worker accepts that they had sent numerous documents containing personal information about children and families from a council computer to their unsecured personal email.

The case examiners are therefore satisfied that there is a realistic prospect of the adjudicators finding the concern proven.

Grounds

The case examiners will now consider whether the adjudicators would determine that this matter amounts to the statutory ground of misconduct. The case examiners are aware that 'misconduct' denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances.

The case examiners consider that a social worker should be aware of the regulator's expectations, and it could be said that they have failed to adhere to the relevant standards. It is suggested that the social worker's conduct may not be aligned to the following professional standards.

Social Work England professional standards (2019):

2.6 I will treat information about people with sensitivity and handle confidential information in line with the law.

3.1 I will work within legal and ethical frameworks, using my professional's authority and judgement appropriately

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

The case examiners consider that it is a fundamental requirement of social workers to handle sensitive and confidential information relating to service users securely and appropriately. In this case, the social worker allegedly sent confidential information from a council account to their insecure personal account on a number of occasions and over three days. The information contained, but was not limited to, identifying information about current and historical children and families open to social work services. This was a serious breach of the policies of the council, including data protection.

The case examiners have noted the social worker had completed the mandatory data protection training and general data protection regulation guidance training in April 2020, that is only some eighteen months before the alleged conduct, and confirmed they were fully aware of the team's data protection policies.

The case examiners are aware that falling short of the standards may not always amount to misconduct. However, adjudicators in this instance may determine that the threshold for misconduct has been reached as this was allegedly a serious breach of confidentiality and data protection of around 50 people.

If the matters were to be found proven, the case examiners conclude the conduct described is likely to suggest a significant departure from the professional standards detailed above.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this matter amounts to the statutory ground of 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.

Assessment of impairment consists of two elements:

1. The personal element, which includes an assessment of the risk of repetition, and
2. The public element, which involves a consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession or to declare and maintain proper standards for social workers.

Personal element

In assessing current impairment, the case examiners have considered, in line with their guidance (2020), whether the alleged conduct is remediable, whether the social worker has demonstrated insight and remediation, and whether there is a likelihood the conduct alleged will be repeated.

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. The case examiners have assessed both the personal and public elements of current impairment.

The case examiners are of the view that the conduct did not arise from a character flaw such as dishonesty, and as such it is possible to remediate in a variety of ways such as additional training and reflection.

The case examiners have made the following observations:

- The social worker submitted during the internal investigation that this was a momentary lapse of judgement. The confidential information had been sent to their personal email in preparation for their Assessed and Supported Year in Employment (ASYE) appeal as they had been unable to print the documentation and their council laptop and phone had been returned. They say that it happened in a moment of confusion, frustration and disappointment and over the next few days they became impulsive. It had not occurred to them that they had allegedly breached data protection regulations until they were notified of such.

- The social worker submits that the events occurred at a time [REDACTED] [REDACTED] they were overwhelmed with [REDACTED] lack of support, the failure of their ASYE and various other factors. They say that despite the prior completion of mandatory data protection training and general data protection regulation training it was an unintentional error of judgement.
- They say it did not result in reputational repercussions for the council, pecuniary loss, destruction of corrupt databases, theft of intellectual property and leaking of confidential information.
- The case examiners consider that the social worker has not provided evidence of the reasons why maintaining confidentiality and being trustworthy is important, and consideration of the impact this can have on service users. On this basis, the case examiners consider the social worker's insight to be limited.
- The social worker has completed the mandatory introduction to governance training and general data protection regulation training (data protection essentials) in June 2022, as required in the disciplinary outcome letter. This training is likely to have provided an opportunity for the social worker to develop further and a very recent understanding regarding the importance of protecting data/confidentiality. However, the social worker has not reflected in this regard. Aside from this training there has been no evidence of remediation and little remorse.
- The case examiners do note that the social worker has remained employed since this concern arose and there is no suggestion there has been any repetition. It is acknowledged that this occurred [REDACTED] [REDACTED] and in circumstances which are unlikely to be repeated.

Given the limited insight and lack of remediation, the case examiners conclude that a risk of repetition remains.

Public element

The case examiners next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers. Public interest includes the need to uphold proper standards of conduct and behaviour and the need to maintain the public's trust and confidence in the profession.

The public expect social workers to work in accordance with relevant legislation and act in a way which seeks to keep vulnerable individuals safe. There is a need to maintain trust and confidence in the profession. The alleged conduct of the social worker has the potential to undermine trust and confidence in the profession. Case examiner guidance (2020) states

‘Some concerns are so serious that action is required even if the social worker poses no current risk to the public. This is because a failure to sanction a social worker in such cases might undermine public’s confidence in social work as a profession.’

Whilst there is no suggestion that a service user was directly harmed as a result of the social worker’s actions, the case examiners have considered the risk of harm as this can be as important as actual harm caused. It is essential for service users to feel confident their data is being managed sensitively and in line with guidance, when this is not the case, the public may justifiably question the actions of the social worker and the wider profession

The case examiners consider that the public would expect the regulator to reach a finding of impairment in this case. Such a finding would make clear to the social worker, the profession and the public that the conduct described in this case is unacceptable and will be taken seriously by the regulator.

Accordingly, the case examiners are satisfied there is a realistic prospect of adjudicators finding the social worker’s fitness to practise to be 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	☒
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 interest may be appropriately fulfilled by virtue of the accepted disposal process

The case examiners have noted that the social worker has indicated to the regulator that they do not consider their fitness to practise to be currently impaired.

Where a social worker does not accept impairment, case examiner guidance (2020) suggests that a referral to hearing may be necessary in the public interest. The case

examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, they noted the following:

- There is no conflict in evidence and the social worker accepts the facts of the concern.
- The case examiners are of the view that there is a risk of repetition, and therefore any finding of impairment would be primarily made in the public interest, to safeguard public confidence.
- The case examiners consider there to be no realistic prospect of adjudicators determining that a removal order may be warranted. The case examiners note that whilst serious, the social worker has demonstrated limited insight into their actions.
- The case examiners recognise that not all professionals will have an innate understanding of how and when the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.
- The accepted disposal process will provide the social worker with an opportunity to review the case examiners reasoning on impairment and reflect on whether they are able to accept a finding of impairment. It is open to the social worker to reject any accepted disposal proposal and request a hearing if they wish to explore the question of impairment in more detail.
- The publication of the decision will provide the social worker with an opportunity to reflect on and gain further insight into the circumstances of this case.

The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

For the reasons stated, the case examiners decided it is not in the public interest to refer this matter to adjudicators; they will write to the social worker and ask if they 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	3 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. In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available options in ascending order of seriousness. The case examiners determined that taking no further action was not appropriate in a case where it has been alleged that the social worker has breached confidentiality and data protection over three days. Taking no further action is not sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct and fails to safeguard the wider public interest. The case examiners 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 believe that issuing advice is not sufficient to mark the seriousness with which they viewed the social worker's alleged conduct. The case examiners then considered a warning order and determined that this was the most appropriate and proportionate response in this case and was the minimum necessary to protect the public and the wider public interest. While a warning will not restrict the social worker's practice, the case examiners are satisfied that restriction is not required as

the risk of repetition is low. A warning would serve as a clear expression of disapproval of the social worker's conduct. Further, a warning will be a signal that any repetition will be highly likely to result in a more severe sanction.

In considering the duration of the warning, the case examiners have again had regard to the sanctions guidance (2019). It is stated that one year may be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers. Three years may be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers. In line with case examiner guidance, three years will also allow the social worker additional time to reflect upon the professional standards expected of social worker. Five years may be appropriate for serious cases that have fallen marginally short of requiring restriction of registration.

The case examiners consider that a one-year warning would not be a proportionate response in this instance. The case examiners do not view the alleged conduct as of 'low seriousness' as this was not an isolated incident, as the social worker is alleged to have sent emails containing confidential information to an unsecured personal email over a period of three days and potentially affecting 50 service users.

The case examiners are mindful that the social worker was [REDACTED] and in circumstances which are unlikely to be repeated. They have continued to be employed by the same authority and there is no suggestion that the social worker has repeated the actions which gave rise to this concern. The case examiners consider the social worker's insight is limited in that it is developing and partial at this stage. Given the above, the case examiners consider that a three-year warning order would be sufficient for the social worker to further reflect on their actions and the professional standards expected of social workers. This would be the minimum necessary to maintain public confidence and to send a message to the public, the profession and the social worker about the standards expected from social workers. The case examiners considered that a five-year duration would be disproportionate and would be punitive.

The case examiners did go on to consider whether the next two sanctions, conditions of practice and suspension, were more appropriate in this case. They considered conditions or suspension would be appropriate where there is still a risk of repetition. As the case examiners determined the risk of repetition to be low, they considered that a conditions of practice order would be disproportionate and would not be suitable in this case. The case examiners considered that suspension from the register would also be a disproportionate and punitive outcome. This would risk deskilling the social worker and the case examiners consider that it is in the public interest to allow the social worker to remain in practice.

To conclude, the case examiners have decided to propose to the social worker a warning order of three 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:

An allegation concerning sending confidential information to an unsecured personal email account is serious. The matter as alleged has the potential to have an adverse impact on the public's confidence in the social work profession.

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

The case examiners warn that as a social worker, you must display behaviour which does not fall short of the professional standards. The case examiners remind the social worker of the Social Work England professional standards (2019). As a social worker I will

2.6 I will treat information about people with sensitivity and handle confidential information in line with the law.

3.1 I will work within legal and ethical frameworks, using my professional's authority and judgement appropriately

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

This warning will remain published for three years.

Response from the social worker

On 13 December 2022, the social worker confirmed that they accepted the disposal in full.

Case examiners' response and final decision

The case examiners have again considered the public interest in this matter and, as they have not been presented with any new evidence which might change their previous assessment, they are satisfied that it remains the case that the public interest in this matter may be fulfilled through the accepted disposal process.

The case examiners therefore direct that Social Work England implement a warning order with a duration of three years.