

Case Examiner Decision
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FTPS-21301

Contents

The role of the case examiners.....	3
Decision summary.....	4
The complaint and our regulatory concerns	5
Preliminary issues	6
The realistic prospect test.....	8
The public interest	14
Accepted disposal	16

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 – Removal Order
Final outcome	Accepted disposal – Removal Order
Date of the preliminary decision	06 June 2023
Date of final decision	08 August 2023

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 have proposed to resolve the case with a removal order. The social worker accepted this proposal and the terms in full on 07 August 2023.

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 relevant Local Authority Designated Officer (LADO).
Date the complaint was received	24 August 2022
Complaint summary	Concern was raised with regards to the conduct of the social worker. Full regulatory concerns are outlined below.

Regulatory concerns and concerns recommended for closure

Whilst registered as a social worker

1. You have shown a lack of professional judgement by engaging in an inappropriate personal and/or professional relationship with a person subject to sex offender registration.

By reason of regulatory concern 1 your fitness to practise as a social worker 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	☐

Requests for further information or submissions, or any other preliminary issues that have arisen
The case examiners consider that regulatory concern 1, presented to them below, should be amended to ensure private information about individuals is not disclosed. Whilst registered as a social worker 1.You have showed a lack of professional judgement by engaging in a personal and professional relationship with a person who is a registered sex offender. As such the case examiners have amended regulatory concern 1 to read as follows: Whilst registered as a social worker 1.You have shown a lack of professional judgement by engaging in an inappropriate personal and/or professional relationship with a person subject to sex offender registration.

The case examiners consider it to be a minor administrative amendment and not one that prejudices the social worker. They therefore do not consider it necessary to return the case to the social worker for further submissions following this amendment.

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 concern 1 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

1. You have shown a lack of professional judgement by engaging in an inappropriate personal and/or professional relationship with a person subject to sex offender registration.

The case examiners have considered the following:

The local authority have provided case records pertaining to the social worker and their family. Within the Children and Young People's Service (CYPS) single assessment, it is documented that in August 2021, the social worker, met and developed a personal and business relationship with a person who subsequently disclosed in October 2021 that they were a registered sex offender, having served a custodial sentence for sexual offences.

The social worker is documented to have ceased their relationship with the person following their disclosure in October 2021, but resumed contact within three weeks.

The social worker went on a combined holiday and business trip to France with [REDACTED] the person [REDACTED]. The social worker states they stayed with a family member and the person stayed in separate accommodation but they spent time daily as a group whilst in France.

There is evidence to indicate that, in April 2022, the social worker was contacted by the police with regards to the person the social worker was in a relationship with. The social worker allegedly shared information with the police which was of value to their enquires, but subsequently refused to provide a statement to the police, and changed their account. Specifically, police monitoring the person subject to sex offender registration state that a police disclosure was given to the social worker on 21 April 2022. Police report that the social worker informed them that the person had 'slept over' at their home at least thirty times in three months. The social worker has since denied the person has stayed at their home; however the police officer, who was given this information by the social worker, confirmed directly with LADO that the social worker said the person had 'slept over' thirty times.

Police monitoring the person subject to sex offender registration investigated the person breaching court directed protective orders. They asked the social worker for a statement, which would inform the investigation, however, the social worker refused to provide a statement to the police.

The social worker was employed in a senior position within the local authority as head of service for the Multi-Agency Safeguarding Hub (MASH) and assessment. As such, the case examiners consider that there was a reasonable expectation that they would demonstrate their ability to use their knowledge and expertise both at work and in their personal conduct.

The social worker, within their correspondence with Social Work England, accepts the regulatory concern.

Having considered the evidence, the case examiners are satisfied there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.





Grounds

The case examiners note there are considered to be two types of misconduct. These are (either of the following):

- misconduct which takes place in the exercise of professional practice
- misconduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

In this case, the alleged misconduct appears to have taken place outside the exercise of professional practice.

To help them decide if the evidence suggests a significant departure from professional standards, the case examiners have considered the following standards, which were applicable at the time of the concerns.

Social Work England – Professional Standards (2019)

Be accountable for the quality of my practice and the decisions I make

As a social worker, I will:

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

3.4 Recognise the risk indicators of different forms of abuse and neglect and their impact on people, their families and their support networks.

Act safely, respectfully and with professional integrity

As a social worker, 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.

Promote ethical practice and report concerns

As a social worker, I will:

6.1 Report allegations of harm and challenge and report exploitation and any dangerous, abusive or discriminatory behaviour or practice.

Social workers are entrusted to safeguard vulnerable client groups from identified risk, one risk is from individuals who pose a risk of sexual harm to others. When a social worker is not demonstrating their awareness and ability to manage identified risk, within their own life, including, as in this case, maintaining personal and business links with a registered sex offender, the risk may be considered transferable to a professional setting. Furthermore, when a social worker refuses to provide a statement of fact to assist a police investigation into a potential breach of a protective court order by a registered sex offender it puts into question the social worker's priority and ability to safeguard others. Accordingly, it is a serious departure from the standards and poses an indirect risk to the public.

Having considered the evidence the case examiners are satisfied there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.

Impairment

The personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test set out in the case examiner guidance (2022), namely whether the conduct is remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated.

The case examiners note that it is difficult to remediate alleged conduct which arises from an attitudinal position or personal belief, although a social worker may at least attempt remediation by reflecting upon their conduct and trying to develop and demonstrate insight.

Whilst the case examiners have had sight of documents from the social worker's previous employer in which they accept their conduct was a 'serious error in judgement', the case examiners do not consider that there has been any evidence of remediation presented. The social worker is no longer in social work practice, making remediation hard to demonstrate, and the social worker is reported to have shared the position that they do not feel they can return to their job role due to the 'error in judgement'.

Further, the case examiners are of the view that the social worker's responses to the police, their employer and in their submissions have been inconsistent and, in their opinion, impact the social worker's credibility and integrity. For example, the police are clear in their evidence what the social worker initially advised them, i.e. that the person had spent time at their home overnight, but the social worker subsequently disputed they had intended to say this, and also refused to provide a statement of fact to the police in evidence. It appears to the case examiners that the social worker may be continuing to protect the person from potential legal sanction, rather than prioritising their professional responsibilities and ensuring the protection of the public.

The social worker has presented a basic level of insight but does not expand upon this to demonstrate how this insight would shape future conduct in a positive manner:

"I do understand that social workers are expected to conduct themselves in a manner that would not cause damage to the public confidence in the profession, inside and outside of work. I understand that by choosing to associate with someone who has a criminal record this could cause such damage to the social work profession. This is why, following my resignation on 15th May 2022, I have not sought employment as a social worker and I have stopped practicing as a social worker even though I was still registered and not under investigation at the time. I did not seek to renew my social work registration for the same reasons when it expired in November 2022. I do hold social work values in high regard and as I explained earlier have always practiced to the best of my abilities. I am sorry to say that I can no longer practice social work in the context I have highlighted

above.”

In light of the limited evidence of insight and remediation, the case examiners consider that a risk of repetition remains high.

The public element of impairment

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.

A social worker who is not able and/or willing to demonstrate their awareness and ability to manage identified risk within their own life would be likely to raise concern about their ability to protect the public in their professional practice. An aggravating feature within this case is the social worker’s disregard for wider safeguarding by refusing to provide a statement of fact to a police investigation into a potential breach of a protective court order by a registered sex offender.

Regulatory concerns regarding safeguarding go to the heart of public confidence in the social work profession. They have the potential to undermine the public’s trust in social workers. As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in regulation of the profession.

Accordingly, the case examiners are satisfied that there is a realistic prospect of the adjudicators making a finding of current impairment.

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 have therefore considered whether a referral to a hearing may be necessary in the public interest. The case examiners have noted the following:

- There is no conflict in evidence in this case and the social worker has accepted the facts.
- The social worker accepts their fitness to practise is impaired.
- The case examiners are of the view that there remains a high risk of repetition, however they consider that this can be managed through other sanctions available to them.

- 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.

Interim order

An interim order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☒

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's Sanctions Guidance (2022) 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 first considered taking no further action but determined that the misconduct was too serious for the case to be concluded with no further action. The case examiners noted earlier that they consider the risk of repetition remains high. Taking no further action would not provide the necessary level of public protection and would not satisfy 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 decided that issuing advice was not sufficient to mark the seriousness with which they view the social worker's misconduct.

The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. In relation to a warning, the case examiners had regard to paragraph 108 of the guidance, which reads:

A warning order is likely to be appropriate where (all of the following):

- The fitness to practise issues is isolated or limited
- There is a low risk of repetition
- The social worker has demonstrated insight

The case examiners have already identified that they consider the risk of repetition is high and that the social worker has demonstrated limited insight. The case examiners also considered that this was not an appropriate sanction, in the circumstances, to address the wider public interest concerns.

The case examiners next considered a conditions of practice order. The case examiners considered paragraph 114 of the guidance which states:

Conditions of practice may be appropriate in cases where (all of the following):

- the social worker has demonstrated insight
- the failure or deficiency in practice is capable of being remedied
- appropriate, proportionate, and workable conditions can be put in place
- decision makers are confident the social worker can and will comply with the conditions
- the social worker does not pose a risk of harm to the public by being in restricted practice

The case examiners were mindful that the alleged conduct took place outside of the social worker's employment, although, there may be a correlation in so far as decision-making and risk assessment. The case examiners note that the social worker is not currently in practice and has indicated they do not intend to return to social work practice. These two factors would make conditions difficult to formulate and oversee and therefore, coupled with the seriousness of the misconduct, the case examiners do not consider conditions an appropriate sanction in this case.

The case examiners went on to consider whether a suspension order might be an appropriate sanction.

The case examiners have considered the guidance, which states:

Suspension may be appropriate where (all of the following):

- the concerns represent a serious breach of the professional standards

- the social worker has demonstrated some insight
- there is evidence to suggest the social worker is willing and able to resolve or remediate their failings

The case examiners have therefore considered the guidance which states a suspension order may be appropriate where workable conditions cannot be formulated.

In this instance, the case examiners consider the concerns represent a serious breach of the professional standards. Since the alleged conduct has been raised with the social worker, they have not been in practice and have provided evidence of an alternative career not aligned to social work. As the social worker has not indicated any wish to return to social work, the case examiners do not consider a suspension order to be appropriate.

The case examiners therefore went on to consider a removal order. The case examiners note the guidance which states that a removal order may be appropriate in cases involving:

- Social workers who are unwilling and/or unable to remediate (for example where there is clear evidence that they do not wish to practise as a social worker in the future.)

The case examiners did not consider that public confidence in the profession could be satisfied by any sanction less than a removal order. It is considered that a fair minded and reasonable member of the public fully informed of the facts, would be significantly concerned by the social worker's alleged misconduct. This, coupled with the social worker's submission that they no longer consider themselves in a position to practice social work due to their conduct, would likely lead such a member of the public to expect the social worker to be removed from the register. The case examiners therefore consider that the only appropriate and proportionate sanction in this case is a removal order.

To conclude, the case examiners have decided to propose to the social worker a removal order. 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 28 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.

Response from the social worker

The social worker responded by email on 07 August 2023 and confirmed *“I understand the terms of the proposed disposal of my fitness to practice case and accept them in full.”*

Case examiners’ response and final decision

The case examiners concluded that the social worker’s fitness to practise was likely to be found impaired but that the public interest could be met through a removal order, rather than through a public hearing, the social worker accepted this proposal.

In light of the social worker’s acceptance of the removal order, the case examiners have considered again whether there would be a public interest in referring this matter to a public hearing. They remain of the view that this is unnecessary for the reasons set out earlier in the decision.

Having been advised of the social worker’s response, the case examiners have again turned their minds as to whether a removal order remains the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of removal is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.