

Case Examiner Decision

James Patrick Collins – SW22457

FTPS-20583

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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 (3 years)
Final outcome	Accepted disposal - warning order (3 years)
Date of preliminary decision	19 January 2023
Date of the final decision	7 February 2023

Executive summary

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 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 requested that the social worker was notified of their intention to resolve the case with a warning order of 3 years; this was subject to the social worker's agreement.

The social worker responded to this proposal, agreeing to the proposed accepted disposal, with a warning order of 3 years.

Having reviewed their determination, 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 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 former employer.
Date the complaint was received	04 April 2022
Complaint summary	The social worker's former employer raised concern about the social worker's management of a staff member's conduct which occurred in May 2020, at the care home they had management responsibility for. The concern is outlined in full in the regulatory concern.

Regulatory concerns

Regulatory concern 1

Whilst registered as a social worker and in your role as care home manager in or around May 2020 you failed to take appropriate action in relation to allegations of sexual harassment between members of staff.

Grounds of impairment

The matters of regulatory concern 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	☐

Requests for further information or submissions, or any other preliminary issues that have arisen
The case examiners have made small changes to the wording of the regulatory concern to best capture the concern being raised. The case examiners do not consider this a material change and as such the social worker's original submissions remain relevant and no further submissions are required. <u>Original regulatory concern</u> Whilst registered as a social worker and in your role as care home manager in or around May 2020 you failed to follow safeguarding procedures by not reporting allegations of sexual harassment between members of staff. <u>Amended regulatory concern</u>

Whilst registered as a social worker and in your role as care home manager in or around May 2020 you failed to take appropriate action in relation to allegations of sexual harassment between members of staff.



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

Reasoning

Facts

Regulatory concern 1

The case examiners have had sight of an email from Person A, dated 10 May 2020. The email follows the 12 week review of Person B. It is said within the 12 week review Person B discussed behaviour from a colleague, Person C. This behaviour included 'over the top flirty' behaviour, with Person C throwing soft balls at Person B and commenting 'I just hit your boob' when one hit them in the chest area, and allegedly pulling Person B's hand to their 'private area, goading them to touch it'. Person B is said to have informed Person A that they had spoken to Person C about their behaviour and they had apologised.

It is documented that Person B answered 'yes' when asked if they were happy with how they had dealt with the incident. However the case examiners also note that Person B reported to Person A some reluctance to take the matter further because they had been in similar situations before, and 'things had not ended pleasantly'; they also stated that

they did not really know what action they wanted *“because things like this can become weird/difficult and it's her word against his”*.

It was agreed that Person A would inform senior care home staff members of the alleged behaviour of Person C.

It was also reported by Person B that a child, a resident of the care home, was present in the room when the alleged incident, during which Person C is alleged to have pulled the hand of Person B towards their groin, took place. The case examiners note that there has been no evidence provided that the child witnessed the alleged conduct, but they acknowledge the child was at risk of harm by virtue of being in a room where Person C perpetrated alleged behaviour which may have been sexually motivated. The child was at risk of being exposed to this alleged behaviour.

The social worker was copied into Person A's email dated 10 May 2020 and at the time was the manager of the care home.

The case examiners have had sight of the email response from the social worker, dated 11 May 2020. In this email the social worker details that they have spoken to Person B and notes the following:

- *“The event took place over six weeks ago. She didn't raise it at the time as was a new member of staff / lacked confidence to do so.*
- *She feels that she has addressed it with (Person C) and wants no further action at this stage. (I did offer to speak with Person C)*
- *She feels that she and (Person C) are able to work together and is happy to do so.*
- *Her interpretation is that (Person C) was jocular / flirty but crossed the line. He was not being predatory etc.*
- *She states that no child's welfare was compromised or she would have raised it at the time.”*

The social worker also stated in this email that he did not see that it was their role to take the matter further, and that it was 'one person's word against another' and 'difficult to substantiate'.

The outcome of the response by the social worker was to take no further action but for Person B to report any further issue to the social worker.

The social worker accepts that they did not raise the alleged incident with their line manager or follow any safeguarding mechanism at the time of hearing about the alleged incident. *“I do accept though that with the benefit of hindsight, on this occasion I made a mistake.” “I should have addressed the issue with (Person C) at the time and appraised my*

line manager of the situation immediately towards identifying if they felt that any further actions, such as reporting the incident to LADO or Human Resources, should be considered.”

The case examiners have also considered whether the behaviour as reported by Person B may have constituted an allegation of sexual harassment; they are aware that sexual harassment includes unwanted behaviour of a sexual nature. They are satisfied that the reported behaviour by Person C, in making a comment that he ‘had hit her boob’ with a soft ball, and later pulling her hand “towards his private area, goading her to touch it’, is likely to constitute sexual harassment. In raising such behaviour, it is clear that Person B found the behaviour unwanted.

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

Grounds

Misconduct

Case examiner guidance (2022) outlines that there are generally 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.

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 following Social Work England professional standards which were applicable at the time of the concerns:

Act safely, respectfully and with professional integrity

As a social worker, I will not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

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.

6.3 Inform people of the right to complain and provide them with the support to do it, and record and act on concerns raised to me.

6.4 Take appropriate action when a professional's practice may be impaired.

The case examiners are of the view from the information presented to them that there is evidence to indicate that the social worker did significantly depart from a number of expected standards during their management of the care home.

The case examiners consider the allegation made by Person B to be serious and had the potential to be sexually motivated. The behaviour of Person C was in a work environment, impacted on a colleague and placed a child at risk of harm. The inaction of the social worker placed a number of individuals, including children, at potential risk of harm, a serious departure from the professional standards.

The case examiners note that the social worker highlights that the former employer did not have in place, at the time of the concern being raised, a sexual harassment policy. The case examiners consider that the lack of guidance should not have impacted on the social worker's ability to recognise the behaviour of Person C as being potentially serious and would therefore increase the necessity to escalate any concern held by the social worker to their line manager for direction.

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

Impairment

The current impairment test has two limbs: the personal element and the public interest element.

Personal

The case examiner guidance (2022) sets out that case examiners will assess whether there is realistic prospect of a finding of current impairment of a social worker's fitness to practise. When doing this, they will consider whether the conduct:

- is easily remediable by the social worker
- has already been remedied by the social worker
- is likely to be repeated by the social worker in future

Whilst the regulatory concern is considered by the case examiners to be a departure from the professional standards, they are satisfied that the social worker's alleged conduct is remediable.

The social worker has presented the regulator, through submissions, with a reflective piece, clearly identifying how they would amend their practice to ensure the concern was not repeated. Furthermore, they have evidenced training completed, confirmed by the facilitator, which directly addressed the alleged shortcomings in their management decision making.

The case examiners have been provided with less evidence demonstrating the social worker's insight; the case examiners consider this area to be lacking from the social worker. The case examiners consider that the social worker has not articulated clearly their understanding of the seriousness of the alleged behaviour of Person C, and the potential immediate and wide-reaching impact of this behaviour in the context of the care home.

Whilst the case examiners consider that the social worker, through training, is aware what actions they would take if faced with a similar situation, they are not as confident that the social worker would have the insight as to why the actions were necessary to prevent harm and may therefore potentially miss aligned concerns. The case examiners therefore consider that some risk of repetition remains.

Public

The case examiners have 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.

The case examiners consider that, notwithstanding the remediation evidenced by the social worker, a failure to sanction a social worker, in a management position, who in such circumstances did not take more positive action to safeguard both children, residing within a care home, and staff working within a care home, is likely to undermine the public's confidence in the social work profession.

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 concern 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	☒

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 (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 determined that taking no further action was not appropriate in a case where it has been alleged that the social worker has not acted upon safeguarding concerns and alleged sexual harassment. 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, while insight remains partial, given the remediation that the social worker has engaged in, the risk of repetition appears 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 (2022). 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 and demonstrate they have addressed any risk of repetition. 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'.

The case examiners acknowledge the knowledge the social worker has gained from the training provided to them by their current employer and their acknowledgement of the regulatory concern, and how they would proceed differently with hindsight. 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 high risk of repetition and no evidence of remediation. As the case examiners determined the risk of repetition to be low, and there to be evidence of some remediation, 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 14 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

Allegations that a social worker has failed in their duties to raise concerns regarding a professional's conduct and act to safeguard vulnerable people can have an adverse impact on the public's confidence in the social work profession. Additionally, such actions could have adversely affected the public.

The case examiners draw your attention to the following Social Work England professional standards:

Act safely, respectfully and with professional integrity

As a social worker, I will not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

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.

6.3 Inform people of the right to complain and provide them with the support to do it, and record and act on concerns raised to me.

6.4 Take appropriate action when a professional's practice may be impaired.

You must ensure that any future practice meets these standards.

In relation to your ongoing practice, the regulator can consider warnings a social worker has received if further fitness to practise concerns are raised about them (and if the concerns are similar in nature).

Response from the social worker

The social worker responded to Social Work England on 03 February 2023 to accept the decision and proposed sanction in full. The case examiners have had sight of the signed response from the social worker, which is dated 01 February 2023.

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 have again considered the public interest in this matter and, as they have not been presented with any new evidence, 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 are satisfied that an accepted disposal (warning order of three years' duration) 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.