Case Examiner Decision
Joanne Hilton – SW101108
FTPS-20845

Contents

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 the preliminary decision	19 January 2023
Date of the final decision	13 February 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 that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with warning order of 3 years. 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 former employer, Innovate CYPS.
Date the complaint was received	8 June 2022
Complaint summary	The social worker is alleged to have taken part in a social media chat which raised concerns about the inference of a relationship with a service user, derogatory comments made in respect of this person and threats of violence and inappropriate language used in respect of colleagues.

Regulatory concerns

On or around the 26 May 2022, whilst registered as a social worker, you:

1. Did not report and/or challenge comments regarding a colleague's potential sexual relationship with a service user.

2. Made inappropriate comments regarding service users and/or colleagues within a group chat conversation.

The matters outlined in regulatory concerns 1 and 2 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 regulatory concerns 1 and 2 being found proven, that those concerns could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

On or around the 26 May 2022, whilst registered as a social worker, you:

1. **Did not report and/or challenge comments regarding a colleague's potential sexual relationship with a service user.**

The case examiners have seen screen shots of a WhatsApp conversation amongst a group of colleagues including the social worker, where a colleague states that, *'me and fitty dad just had a kiss and cuddle'* and that *'I love him and don't want it to transfer the iro was gobsmacked'.* The case examiners note that the social worker responded by asking, *'did you let him touch you', 'are you gonna have sexy time with him'* and *'will you video it. But I only want to see him not u'.*

The case examiners have seen Local Authority Designated Officer (LADO) minutes from 7 and 22 June 2022 where it was reported that another member of the group had raised

concerns to a manager in respect of this conversation. There is no evidence to suggest that the social worker reported the alleged relationship or the concerns to any professional.

The case examiners have also seen minutes from a meeting held with the social worker and their senior managers on 8 June 2022. Within this meeting, the social worker has explained that they did not report the relationship as they did not believe that there was a relationship going on and that it was a joke between them and the colleague in question. They advised that in hindsight they could see that the comments were inappropriate and that *'this was a moment of madness where their friendship with [colleague] of ten years ran away with them'.*

The social worker in their submissions has indicated that they do not accept the concerns, however in their narrative, they indicate that they did not report the concerns or challenge them and provide their rationale as to why they did not take this action.

The case examiners are of the view that the evidence suggests that the social worker did not report the potential relationship or challenge the comments made.

As such, the case examiners are satisfied that there is a realistic prospect of adjudicators finding this fact proven.

2. **Made inappropriate comments regarding service users and/or colleagues within a group chat conversation.**

The case examiners have seen copies of the WhatsApp conversations between the social worker and their colleagues in which the social worker has referred to a service user as being *'fit'* and *'a total hotty'* and asking their colleague to video them having 'sexy time'. Within the same chat thread, the social worker has referred to their manager as a [redacted] *a* [redacted] and that they hated their manager, and stated the manager was a horrible person.

The case examiners have seen copies of a meeting held between the social worker and senior managers on 8 June 2022, where they were questioned about their comments in the chat. The social worker accepted within the meeting that their comments in respect of service users were not appropriate and that they should not have spoken about people they work with in this manner. In respect of their manager, they accepted that their comments were 'harsh, however stated this came from a place of utter frustration, and that they were not happy with how they were being managed. The social worker advised that they knew the difference between speaking in what they considered was a private group chat as opposed to an open or professional forum and would not use this type of language within those arenas.

The social worker in their submissions has accepted this concern.

The case examiners are of the view that anyone reading the comments would consider that the language used was not appropriate.

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

Grounds

Misconduct

The case examiners are aware that misconduct denotes serious acts or omissions which represent a significant departure from what would be proper in the circumstances or conduct that is morally reprehensible and likely to bring the profession into disrepute.

Therefore, the case examiners have considered what adjudicators may reasonably expect from the social worker and how they may view this incident in relation to standards which were in place at the time of the alleged conduct, namely Social Work England Professional Standards (2019). The case examiners consider that the following standards may have been breached:

As a social worker, I will:

2.2 Respect and maintain people's dignity and privacy.

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.

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

The case examiners are aware that falling short of the standards may not always amount to misconduct, but they consider that adjudicators in this instance may determine that the threshold for misconduct has been reached. Where there has been an allegation of a social worker making inappropriate comments on a group chat and not reporting or challenging comments about a potential sexual relationship between a colleague and service user, adjudicators are likely to view this as serious.

The case examiners note that the social worker's alleged actions had the potential to cause harm to the person and their family as assessments and reports had to be rewritten by an independent person as the ones completed by their colleague could no longer be relied upon in the court arena. Whilst the social worker was not responsible for assessing or writing reports in respect of the family, their failure to act upon or challenge the comments during the conversation meant that this continued. Had they intervened at the earliest

opportunity, it is reasonable to suggest that the matter may not have escalated in the way that it did, ultimately impacting on service users.

The case examiners have noted the social worker's comments about the context of the comments as well as their working environment at the time. The case examiners note that the social worker described that they were working in a pressurised environment and there is often a need to voice frustrations, which may not always be done in the most appropriate manner. The social worker advises that it was also at the time of the global pandemic, and they did not have access to as much face-to-face contact with colleagues and therefore relied upon group chats at this time. The social worker advised that their comments in respect of the potential relationship were a joke between old colleagues and as such, they did not consider there was any need to report or challenge this. Finally, they explain that they considered this was a private forum and as such, they were less formal.

The case examiners accept that private conversations may be more relaxed, and they acknowledge the pressures that social workers are under and the importance of having spaces to share and manage these pressures. However, the case examiners consider that the comments made were below the standards expected of social workers, were not appropriate, and potentially caused harm to a family as they had to undergo further assessments. The case examiners were particularly concerned about sexual nature of comments made by the social worker in respect of a service user. It is their view that members of public would be shocked to learn that a social worker had spoken in this way about someone who was receiving social care interventions at the time.

Where it is alleged that a social worker has made inappropriate comments about service users and colleagues, this would not align with Social Work England standard 2.2 and 5.2.

Where it is alleged that a social worker has not reported or challenged a potential sexual relationship between a colleague and a service user, this would not align with Social Work England standard 6.1.

If the matter was 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

Personal impairment

In considering the personal element of impairment, the case examiners have considered the test for personal impairment as 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 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 social worker has shown insight into their alleged conduct. They expressed remorse at the initial meeting with their employer and whilst they explained that they considered they had been having a joke with colleagues in a private space, they could see how these comments could be viewed. They advised that they would never use this type of language in any public forum, however they accepted that their language and context of the discussions was inappropriate. They have commented on how their manager may have felt viewing the comments, however, the social worker has failed to consider the impact on the family involved and what they may do differently if faced with similar circumstances. The case examiners therefore consider that the social worker's insight is developing and is not complete. The social worker has not provided any evidence of remediation.

The case examiners note the social worker's current employer has confirmed that there are no current fitness to practise concerns.

However, in light of the developing insight and lack of remediation, the case examiners consider 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 case examiners consider that a social worker making inappropriate comments in relation to a service user and a colleague would be viewed dimly by the public. The public may accept that social workers work within pressurised environments, and they may need space to air some of these frustrations, however social workers are trusted by the public to treat everyone with respect and dignity and the alleged comments fall far short of these expectations and standards. Although the case examiners are satisfied the social worker has, to a degree, learnt from the incident, they remain concerned that the social worker does not fully appreciate the impact on the service users, public confidence and the wider profession.

The case examiners are of the view that a member of the public would be concerned to learn that a social worker had been allowed to practise without sanction from their regulator in these circumstances.

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 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 noted that the social worker has stated that they do not consider their fitness to practise to be currently impaired and they indicated initially that they do not accept concern 1. 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 whilst the social worker has indicated that they do not accept concern 1, the narrative contained within these submissions suggests that they do as they state, *'I did not report the conversation as I was fully aware that my colleague was not in a sexual relationship with a father of a child open to them'*. Therefore, the case examiners consider that the social worker has accepted that they did not report

or challenge these comments and they have consistently stated this to their employer and the regulator.

• The social worker is clear that they accept that their practice fell short of the standards expected of them. The social worker stated that they *'fully accept it was inappropriate'* and *'I am extremely sorry for my role in this conversation and accept that a third party reading this could and did feel that this needed to be reported'.*

• The case examiners are of the view that there remains a risk of repetition, however they consider that this can be managed through a number of sanctions available to them.

• The accepted disposal process will provide the social worker 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 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.

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 made inappropriate comments in relation to a service user and colleagues. 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 consider that whilst they could offer advice to prevent this situation arising again, this would not be sufficient to mark the seriousness with which they viewed the social worker's alleged conduct.

The case examiners next considered issuing a warning 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 note this occurred in the social worker's

private life as they considered that this was a private forum and they are satisfied that whilst a risk of repetition remains, restriction is not required. 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 had regard to the Sanctions Guidance (2022) which states, *'1 year may be appropriate for an isolated incident of relatively low seriousness. In these cases, the primary objective of the warning is to highlight the professional standards expected of social workers. 3 years may be appropriate for more serious concerns. This helps to maintain public confidence and highlight the professional standards. The period also allows more time for the social worker to show that they have addressed any risk of repetition.'*

The case examiners are of the view that the alleged conduct would not be considered of 'low seriousness'. They note that whilst the social worker has demonstrated some insight, this is still developing. In line with the sanctions guidance, the case examiners therefore consider that a warning order of three years is more appropriate as this will allow the social worker more time to develop further insight and successfully address any remaining risk of repetition. Further, it marks the seriousness of the conduct in this instance. The case examiners consider that a period of three years is appropriate in these circumstances and is 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 hence 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 a still a risk of repetition. As noted above, the conduct occurred in the social worker's private life and as such the case examiners considered that a conditions of practice order 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-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 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

The case examiners formally warn the social worker as follows:

An allegation of making inappropriate comments in relation to service users and colleagues as well as not challenging inappropriate comments is serious. The matters as alleged had the potential to cause harm to service users and colleagues. They also have 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:

2.3 Respect and maintain people's dignity and privacy.

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.

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

This warning will remain published for three years.

Response from the social worker

The social worker responded on 9 February 2023 confirming 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 that might change their previous assessment, they are satisfied that it remains to be the case that the public interest in this case 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 3 years.