

Case Examiner Decision
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FTPS-20730

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.....	7
The public interest	12
Accepted disposal	14

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 final decision	14 February 2023

Executive summary

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

1. The factual concerns could be found proven by the adjudicators;
2. Those concerns could amount to the statutory ground of misconduct;
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and that the case can be concluded by way of accepted disposal.

As such, the case examiners proposed a warning order of 3 years duration, and this has been accepted by the social worker.

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, Buckinghamshire Council
Date the complaint was received	10 June 2022
Complaint summary	The previous employer referred the social worker, stating that they had dismissed them for gross misconduct following a disciplinary investigation and hearing. The regulatory concerns adequately reflect the complaint.

Regulatory concerns

Whilst registered as a social worker:

1. In or around September 2021, you failed to safeguard Child Z in that:

- a. You did not read written logs from a foster carer and therefore did not identify that the carer had been using restraint on Child Z
- b. You did not challenge their actions or tell them to stop physically restraining Child Z
- c. You did not share the safeguarding concerns with the Assistant Team Manager until 4 October 2021, despite having been made aware of the foster carer physically restraining the child by email on 13 September 2021.

The matters outlined in concerns (1a) to (1c) 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	☐

Requests for further information or submissions, or any other preliminary issues that have arisen

The case examiners note that the evidence suggests there was a further opportunity for the social worker to raise concerns about the foster carer's use of restraint, when this was discussed within the foster carer supervision on the 30 September. The case examiners considered whether to add another regulatory concern to reflect this but concluded that the regulatory concerns, as presented to them, adequately capture the seriousness of the conduct.

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 1a, b and c being found proven, that those concerns could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker:

1. In or around September 2021, you failed to safeguard Child Z in that:

a. You did not read written logs from a foster carer and therefore did not identify that the carer had been using restraint on Child Z

The social worker has accepted this concern both within their submissions to the regulator and in the initial interview with their employer, stating they had a high caseload and they regret not prioritising the reading of these logs. There is no wider evidence that may suggest the social worker had reviewed any of the logs, for example case notes or any correspondence or actions having been taken in response to the content logged by the foster carer.

The employer has provided evidence that there was an expectation the social worker would read and countersign the foster carer logs prior to submitting them to the child's social worker, in order to identify any issues and address them with the carer.

The case examiners are satisfied there is a realistic prospect of this regulatory concern being found proven, should the matter go forward to adjudicators.

b. You did not challenge their actions or tell them to stop physically restraining Child Z

The case examiners note the contemporaneous evidence of the supervision record, dated 30 September 2021. It is recorded by the social worker that the foster carer described restraining Child Z and the social worker records that they responded explaining “*adopting the use of containment is a preferred option which is been adopted by other foster carers and I encourage him to use emotional containment to support and manage behaviour*”. The supervision record also notes that the social worker advised the foster carer to utilise the CAMHS support available to them.

The case examiners acknowledge that the supervision record is unlikely to be a verbatim record of what was discussed, however, from the evidence provided, they are of the view that the social worker's response was inadequate as a challenge and not strong enough in expressing that physical restraint was not part of Child Z's care plan and as such, must cease.

The social worker in their interview with the employer stated they did challenge the restraint and advised the carer to contact CAMHS for advice on emotional containment. However, in their most recent submissions to the regulator, the social worker accepts they did not adequately challenge nor stop the restraining conduct.

The case examiners are satisfied there is a realistic prospect of this regulatory concern being found proven, should the matter go forward to adjudicators.

c. You did not share the safeguarding concerns with the Assistant Team Manager until 4 October 2021, despite having been made aware of the foster carer physically restraining the child by email on 13 September 2021

The social worker accepted, during local investigation and in their submissions that they received and read the email from the foster carer, which is explicit about the use of restraint and describes the child as being upset by the restraint.

The social worker's manager reports that concerns were not shared by the social worker until a supervision on 4 October 2021, and there is no evidence available to the case examiners that might suggest concerns were shared earlier. The social worker accepts that this was the case.

The case examiners are satisfied there is a realistic prospect of this regulatory concern being found proven, should the matter go forward to adjudicators.

Grounds

The statutory grounds case examiners have been asked to consider are misconduct. They are aware that 'misconduct' denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances. To understand what would be appropriate in the circumstances, case examiners have considered the conduct of the social worker, the context of this allegation and the impact on those concerned.

At the time of the concern, Social Work England's professional standards (2019) were in place. The case examiners consider that adjudicators may decide the social worker failed to adhere to the following standards;

As a social worker, I will:

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

3.9 Make sure that relevant colleagues and agencies are informed about identified risks and the outcomes and implications of assessments and decisions I make.

3.12 Use my assessment skills to respond quickly to dangerous situations and take any necessary protective action.

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

The case examiners have been provided with evidence which clearly suggests that a child was being physically restrained regularly and this was causing them pain and distress. The foster carer did not seek to hide this fact and shared it with the social worker, in their fostering logs, an email and verbally in a supervision session. The social worker has accepted that they did not act promptly and that not reading the logs led to them not being fully informed of the situation. The case examiners note that this was a carer about whom concerns were already being raised and, as such, they would have expected the social worker to be monitoring closely, to ensure any further concerns were identified and escalated. Safeguarding is a central tenet of the social work role. The social worker has accepted that their lack of action left Child Z in an unsafe placement and the case examiners consider this meets the threshold of seriousness to amount to misconduct.

Impairment

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

The case examiners have assessed current impairment on the grounds of public protection and the wider public interest.

In considering current impairment, the case examiners have considered whether the social worker has demonstrated insight and/or undergone remediation, and whether there is a likelihood the matters alleged will be repeated.

The case examiners note that although the social worker has provided the context of a challenging and demanding work environment at the time of the concerns, they have nonetheless accepted that they should have prioritised reading the foster carer logs. The evidence suggests the social worker accepted this from the beginning of the employer investigation and the social worker has acknowledged that their delay caused a child to be *“left with an unsafe carer”*. The social worker appears to have shown remorse and regret throughout, for the impact upon the child.

The social worker was suspended and subsequently dismissed from their fostering role, so they were unable to remediate in practice but they have provided evidence of online training completed to increase their knowledge and understanding, particularly in safeguarding and learning from serious case reviews, which the case examiners consider to be appropriate and relevant training.

In terms of assessing the risk of repetition, the case examiners have noted that no other concerns were raised by the former employer about the social worker’s practice. Within the supervision session notes between the social worker and their line manager, on 4 October 2021, when restraint is discussed, the line manager records *“i did question why this was not shared with all the professionals following supervision as I am aware that [the social worker] has always communicated with us when there are concerns”*. This suggests that the social worker was ordinarily conscientious and able to recognise concerns and escalate them appropriately.

The most recent employment reference from a social work role confirms that there were no concerns about the social worker’s practice during their time there. The case examiners are therefore of the view that the social worker has demonstrated sufficient insight and remediation for them to be satisfied there is a low risk of repetition.

The case examiners have then moved on to consider whether the social worker’s fitness to practise could be considered impaired, on the basis of the wider public interest. The case examiner guidance (December 2022) states *“some concerns are so serious that if proven, a finding of impairment is likely”*. Case examiners must consider whether a failure to make a

finding of impairment may undermine public confidence in the profession or fail to maintain the professional standards expected of social workers.

The case examiners are of the view that the public should be able to trust that social workers can quickly recognise safeguarding concerns and take prompt action to protect vulnerable service users. They consider that a member of the public may be troubled to learn that a social worker had failed to safeguard a child in foster care and would expect them to be sanctioned by the regulator.

Accordingly, the case examiners have concluded there is a realistic prospect that adjudicators would find 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 are mindful of their guidance, which states they must refer matters to a hearing if a social worker does not accept that they are currently impaired. In this case, although the social worker disputes their fitness to practise is impaired now, they accept that it was impaired at the time of the concerns and accept fully the conduct alleged in the regulatory concerns.

The case examiners are of the view that there is a low risk of repetition, and therefore any finding of impairment would be primarily made in the public interest, to safeguard public confidence.

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.

On this occasion, the case examiners are therefore satisfied that it is appropriate to depart from their guidance, their further reasoning is as follows:

- The social worker has accepted that their conduct fell short of what was expected and there is no conflict of evidence to be addressed.
- Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website.
- The publication of this matter will highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. Publication also demonstrates that appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession.
- The accepted disposal process will provide to 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.

For the reasons given above, the case examiners believe the public would not consider it proportionate to refer this matter to a hearing, having considered the specific circumstances. Considering all the factors discussed above, the case examiners have decided it is not in the public interest to refer this matter to a hearing. Alternatively, they will seek to resolve this matter, with the social worker's consent, by way of an accepted disposal.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	3 years	

Reasoning

The case examiners have considered what sanction would be appropriate in this case, given their conclusion that the social worker is not impaired on the grounds of public protection, but adjudicators are likely to find impairment in the public interest.

The case examiners have worked through the sanctions and consider for a case where the public interest was engaged, that no further action and advice would be unlikely to be appropriate. They acknowledge their guidance allows for exceptional cases where there is evidence of complete remediation and no risk of repetition. However, the case examiners are of the view that the conduct in this case is sufficiently serious as to rule out both no further action and advice, as neither would appropriately mark the severity of the conduct in question.

The case examiners consider a warning would be a proportionate outcome given the full circumstances of the case. A warning would remain on the social worker's record for an allocated time and sends a clear message about the expectation that social workers will carefully monitor situations where there is cause for concern, and respond quickly and effectively to safeguarding issues.

The case examiners have considered whether conditions would be more appropriate than a warning. The case examiners have previously concluded that the social worker does not represent a risk to the public, which suggests that they are safe to practise currently. In these circumstances, the case examiners are of the view that conditions would be disproportionate and unnecessary. As such, suspension would also be a disproportionate and punitive response to this case.

The case examiners have then turned their minds to the duration of the warning. They are of the view that central to this consideration, the length of the warning should reflect how serious the alleged conduct was.

They have consulted the Sanctions Guidance (December 2022) and note that one year is recommended *“for an isolated incident of relatively low seriousness”*. The case examiners do not consider the alleged conduct of failure to safeguard a child who is looked after, to be of relatively low seriousness and therefore conclude this would not be a suitable sanction.

A warning for five years is recommended for social workers whose conduct *“fallen only marginally short of requiring restriction of practice”*. While the case examiners view the social worker’s conduct as serious, they are of the view that a warning of this length would be disproportionate, particularly given the social worker’s insight and remediation meaning that the case has not fallen marginally short of requiring restriction.

The case examiners conclude that the most suitable duration for this warning would be three years, this marking the significance of the alleged conduct and highlighting that such a departure from the professional standards will be dealt with seriously by the regulator.

The case examiners have decided to propose to the social worker a warning order of 3 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

As a registered professional it is essential that you ensure that you are accountable; effective at assessing and responding to risk; and clear and robust when challenge is required. The case examiners would particularly encourage the social worker to reflect upon these professional standards;

As a social worker, I will:

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

3.9 Make sure that relevant colleagues and agencies are informed about identified risks and the outcomes and implications of assessments and decisions I make.

3.12 Use my assessment skills to respond quickly to dangerous situations and take any necessary protective action.

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

In relation to the social worker's ongoing practice, any further issues brought to the attention of the case examiners are likely to be dealt with more seriously by the regulator.

This warning will appear on the social worker's entry on Social Work England's register for three years.

Response from the social worker

The social worker has completed the response form to indicate they accepted the decision and proposed sanction in full.

Case examiners' response and final decision

The case examiners have considered again whether accepted disposal remains the most appropriate resolution of this case and remain of the view that a hearing is not required to uphold professional standards and protect the public. A warning order for 3 years is the most proportionate response.