

Case Examiner Decision
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FTPS-20847

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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 the final decision	22 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 a warning order of 3 years duration. The social worker accepted the case examiners' proposal.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, Innovate CYPs
Date the complaint was received	8 June 2022
Complaint summary	The complainant raised concerns about the content of a whatsapp group conversation, of which the social worker was a participant.

Regulatory concerns

On or around 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.
3. Did not treat information about people with sensitivity, when you posted information about service users into a WhatsApp group chat.

The matters outlined in regulatory concerns 1, 2 and 3 amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct.

Preliminary issues

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

The realistic prospect test

Fitness to practise history

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

Decision summary

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

Yes ☒

No ☐

The case examiners have determined that there is a realistic prospect of the regulatory concerns 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 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 had sight of screenshots, which depict a message thread within a group chat on WhatsApp. The messages include comments from a colleague of the social worker, who referenced having a sexual relationship with a service user.

The social worker's former employer have confirmed that the social worker did not report the matter to them, and there is no evidence in the screenshots (which appear to consist of the full message thread) of the social worker having challenged the comments.

The social worker has accepted that they observed the comments in question, but has submitted that they opted not to respond to them. The social worker's reasoning will be explored later in this decision.

In light of the above, there is a realistic prospect of regulatory concern 1 being found proven.

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

The case examiners observed in screenshots of the WhatsApp group conversation the following comments from the social worker:

- “I have imagined this in my head” (with laughing emojis) – in response to a message from a colleague suggesting that they wanted to slap a manager with a laptop
- “What a weirdo” – posted with reference to a screenshot of text messages sent to the social worker by a service user

The case examiners consider both comments to be wholly inappropriate. With regards to the first, adjudicators may consider it to be unacceptable for a social worker to laugh and joke about a manager / colleague being physically assaulted. With regards to the second, adjudicators may also consider it to be unacceptable for a social worker to use such derogatory language in describing a service user.

In light of the above, there is a realistic prospect of regulatory concern 2 being found proven.

3. Did not treat information about people with sensitivity, when you posted information about service users into a WhatsApp group chat.

The case examiners observed in screenshots of the WhatsApp group conversation the following content posted by the social worker:

- A screenshot of a document containing actions arising from a section 47 report, which included details of next steps in a case and a service user’s name
- A screenshot of text messages sent to the social worker by a service user

The case examiners have noted that it is alleged that the social worker did not treat information sensitively, rather than them having breached confidentiality. The case examiners consider this to be reasonable.

Whilst the information was shared in a closed group, the social worker will have been aware from earlier messages in the thread that one of the participants was in the process of leaving employment in the social worker’s team. Accordingly, the social worker will have known that this individual would not have legitimate access to the information displayed in the screenshots for much longer. In any event, the case examiners would also

consider it inappropriate for content about service users to have been photographed and then shared (and therefore stored) in a third party application.

In light of the above, there is a realistic prospect of regulatory concern 3 being found proven.

Grounds

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 standards, which were applicable at the time of the concerns.

Social Work England – Professional Standards (2019)

As a social worker, I will:

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

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

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

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.

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

In considering whether the conduct before the regulator may amount to misconduct, the case examiners have first considered the nature of the comments made on the WhatsApp group chat, and the context in which they were made.

The case examiners are mindful that the comments were made within a private group setting and, importantly, it is recognised that social workers undertake highly pressurised work and will occasionally need to let off steam. However, in the case examiners' view, the messages they have seen went too far, and can reasonably be characterised as offensive and wholly inappropriate.

The case examiners consider that the social worker had a duty to report and/or challenge the comments made by their colleague about a service user and, as a minimum, if they thought their colleague was joking, they should have clarified this given the severity of the issues being commented upon.

With regards to the sharing of sensitive information, the case examiners consider this to reflect exceptionally poorly on the social worker, as there was no good reason at all for it to have been photographed, shared and stored on a third party application. This is especially the case as the case examiners are mindful that one member of the group thread was in the process of leaving their employment, and therefore it isn't clear that they ought to have had any access to information about service users at the immediate point when the messages were sent, and certainly not once they had left their role.

WhatsApp is not a public forum, but its use is still covered by the professional standards. The regulator's guidance for social workers on those standards is clear that social workers should always use technology with the best interests of the people they work with as the primary consideration. In the case examiners' view, the same is also true of social workers' relationships with their colleagues, as the guidance also states that social workers will need to employ the same skills with their colleagues as with the people they support, to establish strong relationships which are collaborative, respectful and productive. To be clear, the acts of joking about causing physical harm to a colleague, and making derogatory comments about service users are both, in the case examiners' view, exceptionally serious departures from the standards.

In light of the above, there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.

Impairment

Assessment of impairment consists of two elements:

1. The personal element, established via an assessment of the risk of repetition.
2. The public element, established through consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession, or in the maintenance of proper standards for social workers.

Personal element

With regards to the concerns before the regulator, the case examiners have given thought to their guidance (December 2022), and they note that they should give consideration to whether the matters before the regulator are easily remediable, and

whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition might be reduced.

Whether the conduct can be easily remedied

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 through additional training and reflection.

Insight

The case examiners noted from the social worker's submissions that they admit all of the facts, and they have provided explanations for their conduct. In summary, the social worker has explained that they recognise that the comments in the chat thread were inappropriate, and would cause significant harm if they were to become known to the individuals concerned. They also recognise that the screenshots they posted relating to service users should never have been shared. With regards to the issue of reporting/challenging their colleague's behaviour, they have explained that they recognised immediately that the comments made were a joke, and considered that there was no prospect of the individual having actually engaged in a sexual relationship with the service user. They reflected, however, that they could understand how this could have been perceived by individuals who did not know their colleague as well and that, had they been in a similar position, they would have reported the conversation immediately.

The case examiners consider the above to offer evidence of insight, though they are of the view that this is partial at this stage. The case examiners' reasoning for this is that the social worker has not yet demonstrated a full understanding of the standards expected of them in respect of electronic communication. Whilst the case examiners understand the social worker's perspective, that the group was a private forum, the case examiners would nevertheless expect a social worker to have exercised more caution in what they said.

The case examiners also do not agree that the WhatsApp thread can reasonably be considered wholly private. There is a duty on all social workers to report matters of concern and, in this case, there was a duty on the social worker to have reported some of the comments that had been made. Additionally, the professional standards and accompanying guidance are clear that social workers should always use technology with the best interests of the people they work with as the primary consideration.

The case examiners are assured that the social worker has developed some understanding of this point, having stated:

This was a closed conversation between professionals who were dealing with growing challenges of a day to day social work practice and who found a way to release a level of frustration that felt safe and appropriate at the time. I now know that the conversation was inappropriate and I regret it greatly. I also fully accept that there are better and more appropriate ways to promote emotional wellbeing and resilience in social work practice.

However, in the case examiners' view, they would hope to have seen more depth of reflection on the serious risk that the social worker's conduct has posed to public confidence in them, and in their wider profession.

Remediation

The case examiners have received little in the way of evidence of remediation from the social worker, beyond their reflections in their submissions.

Risk of repetition

In light of the case examiners' conclusions above, they can only conclude that a risk of repetition remains.

Public element

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 have outlined their view that the social worker's conduct represents a serious departure from the standards expected of social workers and the case examiners consider that the public would expect the regulator to reach a finding of impairment in this case.

It is the case examiners' view that although the public will understand that social workers work in highly pressured environments, and they will need to let off steam occasionally, they would share the view that the comments made by the social worker were wholly inappropriate. In addition, the public would expect that social workers challenge each other when they have gone too far, and that they would report issues when necessary, in the interest of public protection. The case examiners are also satisfied that public confidence could be seriously damaged by a social worker sharing information about service users, and commenting negatively on it, within a third party application.

In such circumstances, a failure to find impairment may undermine public confidence in the regulator maintaining proper professional standards for social workers.

Accordingly, the case examiners are satisfied that there is a realistic prospect of the adjudicators finding the social worker's fitness to practise to be 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 have found no conflicts in evidence that require resolution at a hearing, and the evidence available indicates that the social worker accepts all of the key facts. However, the case examiners have noted that the social worker has indicated to the regulator that they do not consider their fitness to practise to be impaired.

Where a social worker does not accept impairment, Case Examiner Guidance (December 2022) suggests that a referral to hearing may be necessary in the public interest. The case examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, they noted the following:

- There is no conflict in evidence in this case and the social worker accepts all of the key facts.
- With regard to the personal element of impairment, the case examiners concluded earlier in this decision that there remains a risk of repetition. However, the case examiners also found evidence of partial insight. In the case examiners' view, further insight is necessary in this case for a determination to be made that the risk of repetition is low. However, the case examiners consider that, in light of the social worker's developing reflection on the matters before the regulator, on this occasion, it would be appropriate and proportionate to offer the social worker opportunity to review the case examiners' reasoning on impairment, and to consider whether they agree.
- With regard to the public element of impairment, the case examiners recognise that not all professionals will have an innate understanding of how and when the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.
- The accepted disposal process will provide 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.

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

The case examiners have considered the available sanctions, starting with the least severe. They are mindful that the purpose of a sanction is not to punish the social worker, but to protect the public and the wider public interest; and that it is expected that the sanction imposed is the least severe sanction necessary.

The case examiners determined that taking no further action was not appropriate in this case. 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 gave careful consideration to whether a warning might be suitable, given that it would show clear disapproval of the social worker's conduct. They were mindful of their guidance, which states that where there is a risk of repetition, a sanction requiring restriction of practice will normally be necessary. A warning order would not restrict the social worker's practice but, on this occasion, the case examiners consider that conditions of practice or suspension are not warranted. The case examiners are of the view that although the social worker's development of insight is not as yet complete, oversight by the regulator of their further reflective process would be disproportionate,

and a warning will achieve the primary goal of protecting the public and safeguarding public confidence.

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 sanction's 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 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

The case examiners formally warn the social worker as follows:

Your conduct in this case had the potential to cause harm to service users and colleagues, and to have an adverse impact on public confidence in the social work profession. The comments made were wholly inappropriate, and you had no legitimate basis for sharing information about service users in the chat thread. Furthermore, you had a duty to report or challenge comments made by a colleague and you did not do so.

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:

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

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

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

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.

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

Response from the social worker

The social worker has returned a completed response form, signed and dated 22 February 2023, confirming that they have read the case examiners' decision and that they understand the terms of the proposed disposal and accept them 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 the regulator implement a warning order with a lifespan of 3 years.