



Case Examiner Decision

Skott Morgan – SW112765

FTPS-20848

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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 – 3 year warning order
Date of the preliminary decision	1 March 2023
Final outcome	Accepted disposal – 3 year warning order
Date of the final decision	23 March 2023

Executive summary

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

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

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

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

The case examiners have subsequently been advised that the social worker has accepted the terms of their proposed disposal, i.e., a warning order of three year's duration, in full. 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	8 June 2022
Complaint summary	The complaint relates to messages allegedly exchanged by the social worker in a WhatsApp group chat with colleagues. The allegations are that the social worker failed to report comments made by a colleague that may have indicated the colleague was in a sexual relationship with a service user, and also that the social worker made inappropriate comments relating to other 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 colleagues within a group chat conversation.

The matters outlined in regulatory concerns 1 and 2 amount to the statutory grounds 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 adverse 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 grounds 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 carefully considered all of the information presented to them, and specifically note the following in relation to concern 1:

- There is evidence of messages exchanged via WhatsApp between the social worker and other colleagues on or around 26 May 2022.
- Some of these messages indicate that a colleague may have had a sexual relationship with a service user, who was the father of a child on that colleague's

caseload; for example, the colleague referred to having “just had a kiss and cuddle” with ‘fitty dad’.

- While the social worker submits that they did not read these specific messages, the case examiners are satisfied, given that they were sent among conversations that the social worker was engaging in that day, that it is reasonable for them to conclude that they would have seen them. The case examiners note, however, that the social worker did not respond themselves directly to any of the comments made by their colleague about the service user.
- The evidence indicates that the social worker did not report or challenge the comments made by their colleague.

The case examiners are satisfied that there is sufficient evidence to support a realistic prospect of adjudicators finding the facts of concern 1 proven.

2. Made inappropriate comments regarding colleagues within a group chat conversation.

The case examiners have carefully considered all of the information presented to them, and specifically note the following in relation to concern 2:

- There is evidence of messages exchanged via WhatsApp between the social worker and other colleagues on or around 26 May 2022.
- Some of these messages that appear to have been sent by the social worker include inappropriate comments, including that they “want to slap” a line manager with their laptop, references to two managers as a [REDACTED] (with the word written in full), and to one also as a [REDACTED] “nake” (again, written in full).
- The social worker does not dispute making these comments, but does submit an account of the context in which they were made.

The case examiners are satisfied that there is sufficient evidence to support a realistic prospect of adjudicators finding the facts of concern 2 proven.

Grounds

The case examiners have next considered the grounds of misconduct in relation to concerns 1 and 2.

In considering 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, and which represent a risk to the public or to the wider

public interest, such as confidence in the profession or maintenance of the professional standards.

The case examiners consider that the allegations are serious. In relation to concern 1, whether or not the colleague intended for their comments to be taken seriously, i.e., with regards to them being involved in a sexual relationship with a service user, they are, regardless of intent, clearly inappropriate, and should have been challenged. The comments were made by a social worker working with the family of a child subject to a child protection plan, and required that social worker to demonstrate independence and professionalism, and to submit unbiased and credible assessments for the purposes of legal proceedings. Such comments as appear to have been made by that colleague had the potential to undermine the integrity of their work and prejudice court proceedings. Having been informed of them by a third party, the local authority provided the family with an independent social worker and the family had to undergo a further assessment.

Furthermore, all social workers should be able to keep an open mind to the possibility that their colleagues could be involved in wrongdoing, including abusing their position for sexual gain, and should report comments of a sexualised nature so that the circumstances can be independently assessed.

In relation to concern 2, again the case examiners consider the allegations to be serious. For example, threats to 'slap' a colleague, regardless of actual intent, or whether made in jest or while under pressure, are clearly inappropriate and bring into doubt the judgment and professionalism of the social worker making them. Similarly, the use of expletives and offensive remarks about others, including when used in what may have been considered a private conversation with colleagues, indicate a lack of respect for others and again have the potential to undermine confidence in the profession.

The case examiners are satisfied that there is evidence to indicate that the social worker's actions may have breached a number of Social Work England professional standards (2019) including, but not necessarily limited to:

3.7 Recognise where there may be bias in decision making and address issues that arise from ethical dilemmas, conflicting information, or differing professional decisions.

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

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.

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.

The case examiners have also carefully considered mitigation put forward by the social worker, including information regarding their health and how they felt they were being treated in the workplace at the relevant time. While the case examiners have seen cogent evidence in relation to issues likely to impact on the social worker's health and state of mind, they do not consider that these justify the significant breaches of the expected professional standards they consider took place, as detailed above.

Having carefully considered the social worker's alleged actions and the professional standards required, the case examiners are satisfied that there is a realistic prospect of adjudicators finding the grounds of misconduct proven.

Impairment

The case examiners have next considered whether there is realistic prospect of a finding of current impairment of the social worker's fitness to practise.

In considering the personal element of impairment the case examiners have taken into account whether the alleged conduct of the social worker is easily remediable, has been remedied by the social worker, and whether there is a risk of future repetition.

The case examiners consider that the alleged behaviours are remediable, for example through reflection and further training; they are not rooted in evidence of a deep-seated character flaw. The case examiners also do consider that the social worker has shown some evidence of remediation and insight, although it is limited. The social worker, while submitting that they did not see the messages relating to concern 1, acknowledges that the content is inappropriate. In relation to concern 2, the social worker admits the concern and states that they have apologised to one of the colleagues they made inappropriate comments about, and also that they would not behave the same way in future. They also state that they have reflected on social work ethics and values and highlighted where they need to reflect, and intend to complete further training and reading on communication. However, without clearer evidence of specific reflection and of what remedial work the social worker has taken, rather than what they intend to take, the case examiners consider that insight is partial and that some risk of repetition remains.

The case examiners next considered whether the social worker's alleged actions have the potential to undermine public confidence in social workers and whether this is a case

where adjudicators may determine that public interest requires a finding of impairment. 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 are of the view that the allegations are serious and that a number of professional standards may have been breached. They consider that an ordinary member of the public would be concerned to learn that a social worker had acted in the way alleged in concerns 1 and 2. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Accordingly, case examiners are satisfied there is a realistic prospect of adjudicators finding that the social worker's fitness to practise is 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 carefully considered whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators.

In this case, while the case examiners have found a realistic prospect of adjudicators finding current impairment, they consider the concerns to be remediable. While the case examiners consider insight to be limited at this time, they note that the social worker has recognised the need for further reflection and training, and they consider that any risk to public safety can be addressed without the need for a hearing, with any potential risk being managed through the 'accepted disposal' process, if the social worker agrees.

The case examiners have also considered whether the matter is of such seriousness that there is a realistic prospect that adjudicators would consider removal and whether the matters arising require a hearing to maintain public confidence in the profession, and to uphold the professional standards of social workers. The case examiners have concluded, having taken into account all the circumstances of this case, that this not the type of case which requires public scrutiny at a hearing. The case examiners are also not of the view that public confidence in the profession or the regulator would be damaged if there was not a public hearing. They consider that public confidence can, instead, be addressed through the accepted disposal process and with the sanction published on Social Work England's website.

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 material conflict in evidence in this case, and whilst the social worker has indicated that they do not accept concern 1, they do not claim to have reported or challenged 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 *'agree that I made inappropriate comments'* and *'I have reflected on this significantly since the situation occurred, and understand the importance of taking a moment to pause before answering any questions, when I am feeling upset'*.
- 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 grounds and impairment and reflect on whether they are able to accept a finding of impairment in relation to the concerns. 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 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 a social worker has failed to report comments of a sexual nature made by a colleague about a service user, and has also made offensive comments about colleagues, and commented that they would like to 'slap' a line manager. Taking no further action is not sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct, and also 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 view 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 note the social worker, in this instance, has demonstrated that they have an understanding of how their comments were inappropriate even in a place that they considered to be a private forum. The social worker has demonstrated that their insight is developing. The case examiners are satisfied that whilst a risk of repetition remains, oversight by the regulator of further reflection and insight is not required. A warning will 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 sanction guidance. They do not consider that one year is sufficient given the seriousness with which they view the social worker's alleged conduct, and where some risk of repetition remains.

The case examiners note from the guidance that 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, while five years may be appropriate for serious cases that have fallen marginally short of requiring restriction of registration. Given the above, in line with the sanctions guidance 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 have also considered whether either of the next two sanctions, conditions of practice or suspension, would be more appropriate in this case. They are aware that oversight by the regulator would usually be appropriate where there is still a risk of repetition, however, for the reasons outlined above, they do not consider that oversight by the regulator is required. The case examiners also consider 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

The case examiners formally warn the social worker that their conduct fell significantly short of the required standards and had the potential to place service users at risk of harm. Behaviour bringing into question a social worker's suitability to work as a social worker is likely to have an adverse effect on public confidence in the profession.

To assist the social worker in avoiding any future repetition of breaching professional standards, the case examiners draw the social worker's attention to Social Work England's Professional Standards, and in particular the following.

3.7 Recognise where there may be bias in decision making and address issues that arise from ethical dilemmas, conflicting information, or differing professional decisions.

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

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.

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

In relation to 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). Any repetition of such behaviour would be likely to attract a more serious outcome.

This warning will remain published for three years,

Response from the social worker

The social worker has confirmed that they have read the case examiners' decision and the accepted disposal guide, and that they understand the terms of the proposed disposal (a warning order of three year's duration) and accept them in full.

Case examiners' response and final decision

Following receipt of the social worker's confirmation of acceptance of the accepted disposal, 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 are satisfied that an accepted disposal (warning order of three year's duration) remains the most fair and proportionate way to address the concerns, and is the minimum necessary to protect the public and satisfy the wider public interest.