

Case Examiner Decision
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FTPS-18050

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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
Date of the preliminary decision	28 March 2023
Final outcome	Accepted disposal - warning order 3 years
Date of the final decision	4 May 2023

Executive summary

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

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

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

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

The case examiners have subsequently been advised that the social worker has accepted the terms of their proposed disposal, 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 current employer.
Date the complaint was received	2 August 2020
Complaint summary	The social worker's employer raised concerns alleging that the social worker had failed to adequately assess, and had authorised, a case closure for a vulnerable child.

Regulatory concerns

- 1) Whilst registered as a social worker and in your role as Team Manager you failed to manage risk effectively by closing a case on 6 June 2019 without appropriate management oversight.

The matter outlined in regulatory concern (1) amounts 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

This case was initially presented to the case examiners with a recommendation for case closure. Paragraph 4 (1) (d) of the Social Work England appointment rules 2019 allows investigators to recommend that a case be closed if, for example, they have not been able to find evidence to support the concerns, or if the evidence significantly undermines the concerns raised. Decisions regarding concerns being recommended for closure remain the remit of the case examiners.

In determining whether this case could be closed, the case examiners, in their decision of 26 September 2022, noted the commentary and signposting to relevant evidence provided by the investigators. The case examiners independently and carefully assessed all of the evidence available to them, and considered that there may be sufficient evidence to support a realistic prospect of adjudicators finding the facts of the concern proven. The case examiners were also of the opinion that there was the potential for there to be a realistic prospect of adjudicators finding the statutory grounds

(misconduct) proven. The case examiners noted that the actions and/or omissions of the social worker may have contributed to subsequent significant harm being caused to a vulnerable child.

The case examiners therefore considered it to be necessary, proportionate and in the public interest, for them to pause their determination and for the concerns to be presented to the social worker as substantive concerns, and for the social worker to be invited to make submissions in relation to them. They considered that a request for submissions from the social worker was necessary, for the case examiners to be able to make a fully informed decision in relation to the statutory grounds and current impairment.

The case examiners noted their guidance, which states they should only request further information if it would not be possible to reach a decision without it; they were satisfied that their chosen course of action was consistent with this guidance.

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

Reasoning

Facts

- 1) Whilst registered as a social worker and in your role as Team Manager you failed to manage risk effectively by closing a case on 6 June 2019 without appropriate management oversight.

The case examiners have carefully considered all of the information presented to them in the evidence bundle, and have particularly noted the following:

- Background information to the case shows previous children's social care involvement when a referral was initially made by Probation in June 2017, regarding a male serving a prison sentence for an offence of sexual activity with a female child under the age of 16. The male had indicated that, on his release, he wanted to resume contact with his daughter, and a request was made for Children's Services to undertake an assessment as to whether contact should be supervised or unsupervised.

- At this time, the initial referral stated that there was no evidence to suggest that the male specifically posed a risk of sexual harm to his daughter, but that she would be a similar age to the victim of the index offence on his release from prison.
- The case was closed at this stage (3 July 2017), as it was considered premature to complete the assessment, as the release date was not until September 2017; it was recorded as being agreed that probation would refer nearer the release date. Management oversight by others at that time, noted that the mother had been 'spoken to', and had been made aware that any contact would need to be supervised, although no assessment had been completed.
- No further involvement was recorded with Children's Services until April 2019, when a further referral from probation was received. This requested an assessment to establish whether contact with the child could be moved from supervised to unsupervised.
- Home visits were conducted and a Child and Family Assessment was completed and signed off by a Senior Practitioner on 28 May 2019. A closure summary was also written on the case file on this date by the allocated social worker. On 3 June 2019, the Child and Family Assessment was completed, and concluded that contact could be moved to unsupervised.
- On 6 June 2019, the case was passed onto the social worker as the allocated Team Manager for the team holding the case was on leave. Following the outcome of the Child and Family Assessment, the case was confirmed for closure by the social worker (who was a team manager for a different team). No closure summary, case note or review appears to have been completed by the social worker.
- On 19 June 2020, a referral was received from the police advising that the child had disclosed having been raped multiple times by their father between January - May 2020. The father is recorded as having admitted offences to the police.
- A subsequent review of the case conducted by the local authority highlighted concerns with regards to actions/omissions by the professionals and agencies involved; it concluded that there appeared to be a lack of a joined-up approach between Children's Services and Probation. In relation to the social worker, these included there being no oversight or rationale on the file from them in respect of the decision-making that led to the case closure.
- The social worker does not dispute having closed the case. They are recorded in the employer's investigation as stating that *"if someone asked me to close case I*

would have as stops time ticking on case” (sic). The social worker is also recorded as stating that if a senior practitioner had signed off a child and family assessment, that they would not then necessarily check the case.

- A copy of an email dated 20 May 2019 indicates that recording guidance was circulated to managers, including the social worker. The subject heading was ‘Please Read and Action’, and the body of the email included a request to ensure that the information was shared with the teams, and covered in supervision and team meetings. The email stated the guidance ‘*MUST be used with immediate effect*’, and explained that, in relation to case closures, closure summaries, covering all aspects in the recording guidance, were required. Further, the risks associated with not including closure summaries were articulated as being ‘unsafe’.

Having considered all of the information presented to them, the case examiners are of the view that the social worker’s role, in authorising the case closure, required them to read the associated reports and recommendations, and to assure themselves that authorising closure was appropriate, and did not leave a child at any risk of future harm. The evidence they have seen, however, indicates that the social failed to review the information presented to them as required, and instead approached case closure as a purely administrative function, to be done as quickly as possible. As such, there is evidence to suggest that the actions of the social worker did not address safeguarding risks or provide adequate management oversight.

The case examiners consider there to be a realistic prospect of adjudicators finding the concern proven in relation to the facts.

Grounds

The case examiners have been asked to consider the grounds of misconduct in relation to the regulatory concern. 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 concern is serious; it relates to an alleged failure to demonstrate the required degree of management oversight on a case involving a vulnerable child, and thus ensure that a recommendation for case closure was a safe decision and in the best interests of the child. To assist them in determining if the alleged conduct represents a breach of professional standards, the case examiners have considered those standards in place at the relevant time, i.e. the Health and Care

Professions Council (HCPC) Standards of Performance and Ethics 2016 and HCPC Standards of Proficiency, Social Workers in England 2017, and consider that a number of standards may have been breached, including (but not necessarily limited to):

HCPC Standards of Performance and Ethics 2016:

6.1 You must take all reasonable steps to reduce the risk of harm to service users, carers and colleagues as far as possible.

6.2 You must not do anything, or allow someone else to do anything, which could put the health or safety of a service user, carer or colleague at unacceptable risk.

9.1 You must make sure that your conduct justifies the public's trust and confidence in you and your profession.

10.1 You must keep full, clear, and accurate records for everyone you care for, treat, or provide other services to.

The case examiners acknowledge that there is evidence to indicate that other professionals, including those in partner agencies, may have failed to take all the steps required of them to safeguard a vulnerable child. However, the case examiners are required, in relation to the case presented to them, to take account of what was required of this social worker, as an autonomous professional. Having carefully considered the evidence referred to above in 'facts', and the standards in place at the relevant time, the case examiners consider there to be evidence to indicate that the social worker's conduct may have fallen short of what would be expected of them as a manager in the circumstances.

As such, the case examiners have concluded that there is a realistic prospect of adjudicators finding the grounds of misconduct proven.

Impairment

The personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test 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 do consider that the alleged conduct is remediable by the social worker, for example through training in relation to the management role in case closures, and insight and reflection on their alleged acts and/or omissions, together with a consideration of how they might respond differently in future.

However, the case examiners have been presented with limited evidence of insight or reflection by the social worker, and there is no acknowledgment or consideration of why approaching the case closure as an “admin function” (as put forward in a statement to their employer), posed a safeguarding risk. The social worker has acknowledged that they should have looked at the case in more depth, but stated that due to what was going on at the time, they took the word of the senior practitioner that the case was safe to close. In recent emails to the case investigator (March 2023), the social worker comments on the roles of the manager and senior practitioner who had full oversight of the case, and who felt it ‘safe to close without full risk assessment.’ The case examiners are unable to comment on the practice of other professionals within this decision.

The case examiners have not been presented with any evidence of remediation.

While the case examiners acknowledge that the concern only relates to one case, in the absence of evidence of insight and remediation, the case examiners consider that a risk of repetition remains.

The public element of impairment

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 there is evidence to indicate that the social worker’s alleged actions and/or omissions may have contributed to a vulnerable child being placed at risk of harm, and that that child was subsequently subjected to serious harm. Notwithstanding any wider organisational or professional failings by others, the case examiners consider that these actions, if subsequently found proven, would be viewed dimly by a fully informed member of the public, and that they would consider it inappropriate for the social worker to practise without sanction from their regulator.

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 considered whether a referral to a hearing may be necessary in the public interest, and have noted the following:

- There is no conflict in the evidence in this case and the social worker has accepted the key facts.
- While it is unclear whether the social worker accepts that their conduct is impaired, as they have not addressed this through submissions, the accepted disposal process will provide the social worker an opportunity to review the case examiners' reasoning on impairment, and reflect on whether they do 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 grounds or the question of impairment in more detail.

- The case examiners are of the view that there remains a risk of repetition, however they consider that this can be managed through other sanctions available to them.
- 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, case examiners have 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. Furthermore, the guidance requires that decision makers select the least severe sanction necessary 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 sanctions in ascending order of seriousness. The case examiners first considered taking no further action, but considered that this would not be appropriate in a case where a social worker, in a management role, had failed to demonstrate appropriate management oversight and ensure that a vulnerable child was safeguarded. Taking no further action would not provide the necessary level of public protection and would not satisfy 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 decided that issuing advice was not sufficient to mark the seriousness with which they view the social worker's alleged conduct, or satisfy the public interest in a case where actual serious harm had subsequently occurred. The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is

potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. The case examiners are of the view it is necessary to preserve public confidence in the profession and as such have decided to suggest a warning order, which implies a clear expression of disapproval of the social worker's conduct. The case examiners have considered the length of time for the published warning and consider three years to be proportionate in this case. The case examiners consider that a period of three years is appropriate in the circumstances 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. This period will also provide the social worker with an opportunity to reflect further on the case and develop insight in order to address any continuing risk of repetition. The case examiners did not feel that one year was sufficient given the seriousness of the allegation, but felt that five years was disproportionate.

The case examiners went on to consider whether the final two sanctions, conditions of practice and suspension were appropriate in this case. 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. 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. Further, they concluded, given that the concerns relate to one specific incident and no further concerns have been raised in the intervening years, that conditions of practice were not an appropriate sanction. The case examiners considered that suspension from the register would be a disproportionate and punitive outcome in this case.

The case examiners will notify the social worker of their intention to suggest a published warning 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:

Your failure to provide sufficient management oversight of a case closure decision contributed to a young person being placed at risk of significant harm. Your conduct could have an adverse effect on the public's confidence in you as a social worker. It may also damage the reputation of the social work profession. This conduct should not be repeated.

You are reminded of the need to comply with Social Work England's professional standards for social workers (2019), and in particular:

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

3.2 Use information from a range of appropriate sources, including supervision, to inform assessments, to analyse risk, and to make a professional decision.

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

3.5 Hold different explanations in mind and use evidence to inform my decisions.

3.8 Clarify where the accountability lies for delegated work and fulfil that responsibility when it lies with me.

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

6.2 Reflect on my working environment and where necessary challenge practices, systems and processes to uphold Social Work England's professional standards.

6.5 Raise concerns about organisational wrongdoing and cultures of inappropriate and unsafe practice.

Any further matters brought to the attention of the regulator are likely to result in a more serious outcome.

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.