

Case Examiner Decision

Munyaradzi Nhundu – SW12134

FTPS-20436

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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

If the case examiners find a realistic prospect of impairment, they consider whether there is a public interest in referring the case to a hearing. If there is no public interest in a hearing, the case examiners can propose an outcome to the social worker. We call this accepted disposal and a case can only be resolved in this way if the social worker agrees with the case examiners' proposal.

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	23 April 2024
	Accepted disposal proposed - suspension order (18 months)
Final outcome	30 April 2024
	Accepted disposal - suspension order (18 months)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1,2 and 3 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of adverse physical or mental health and regulatory concerns 2 and 3 amounting to the statutory ground of misconduct.
3. For regulatory concerns 1, 2, and 3, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is currently impaired.

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

As such, the case examiners requested that the social worker be notified of their intention to resolve the case with a suspension order of 18 months. The social worker agreed to this proposal and the case examiners have concluded the case 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.

Anonymity and redaction

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in [REDACTED] will be redacted only from the published copy of the decision and will therefore be shared with the complainant in their copy. Text in [REDACTED] will be redacted from both the complainant's and the published copy of the decision.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, Southampton City Council.
Date the complaint was received	1 March 2022
Complaint summary	The concerns were raised in respect of the social worker's management of their health. The social worker was away from work for a significant period and subsequently resigned from their employment. Information provided by the complainant suggested that the social worker may lack insight into their condition, as concerns have been raised with the social worker that they are not currently safe to practise, however the social worker is alleged to be continuing to seek work and not accepting the findings of a professional report in respect of their health.

Regulatory concerns

Whilst registered as a social worker you:

1. Have an adverse health condition as set out in Schedule 1 which impacts on your ability to practise as a social worker.



2. Between 2021 to 2022 applied for work as a social worker despite being aware of concerns about your ability to practise safely due to your health.

3. Between 2021 to 2022 did not make a declaration to the regulator regarding occupational health reports as agreed.

The matters outlined at regulatory concern 1 amount to the statutory ground of adverse physical or mental health.

The matters outlined at regulatory concern 2 and 3 amount to the statutory ground of misconduct.

By reason of your misconduct and/or adverse physical or mental health your fitness to practice is impaired.

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

5 October 2023

The case was originally presented to the case examiners on 5 October 2023, with a recommendation for closure of regulatory concern 1. The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties. However, the case examiners considered, bearing in mind their investigatory function and statutory duty, that further information was needed to be able to reach a decision on this case.

The case examiners noted the case examiner 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 is consistent with the guidance.

Additional information

The case examiner guidance states that case examiners must request information in writing and explain why it is required. As such, they requested the following:

- A UKIM assessment, exploring the social worker's current health and how this impacts upon their ability to practise as a social worker.

The case examiners requested this, as they were unable to make an assessment on the social worker's current fitness to practise as they considered that they had insufficient information.

The case examiners note that they had been provided with an occupational health report from February 2022, which states that the social worker has been assessed as medically unfit to continue to practise as a social worker. The case examiners also had GP information from April 2022; however, the GP did not comment upon the social worker's ability to practise or how their health impacts upon them. The case examiners note that the social worker was disputing the findings of the occupational health report.

The case examiners note that the social worker sought employment since this time. The employers in their references, have commented upon the abilities of the social worker to appropriately carry out social work tasks and how the social worker has struggled to meet the required standards. The employers had also raised concerns of the social worker falling asleep at work and being unable to utilise case management systems and complete records to the required standards. However, the case examiners note that this was from employers in 2022.

Therefore, the case examiners sought clarity over the social worker's current health and how this impacted upon their ability to practise safely. The UKIM report was essential for the case examiners to make a fair decision in this case.

Recommendation for closure and social worker submissions

The case examiners were not in agreement with the closure of concern 1.

The case examiners were of the view that there was sufficient evidence presented, to suggest that there was a realistic prospect of adjudicators finding that the social worker has an adverse health condition and that this condition may impact upon their ability to practise safely. The evidence presented suggests that the social worker lacks insight into their condition and as such has continued to seek employment, despite the recommendations from the occupational health report.

As such, the case examiners requested that concern 1 was presented as a formal regulatory concern and after gathering additional information in the form of a UKIM assessment, that the social worker was offered an opportunity to comment on the updated information.

15 April 2024

The case was returned to the case examiners with formal regulatory concerns formulated along with an UKIM assessment.

The case examiners note with the UKIM assessor states, [REDACTED]

[REDACTED]

The case examiners made enquiries with the regulator and the social worker, via the investigator whether either party had requested any such assessment and whether this was in progress. The investigator stated that this was considered, however this would cost £15,000.

In light of this, the case examiners consider that it would not be proportionate to pause their case again to obtain this, as they have already received information from two health professionals in respect of the social worker's health and the impact on their fitness to practise. They further consider that it would be unfair to ask the social worker to obtain this, due to the costs this may incur.

The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties. In light of the above, they consider that it is fair and proportionate that the matter is concluded, and they determined that they had sufficient information to proceed with their determination.

The realistic prospect test

Fitness to practise history

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

Decision summary

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

Yes



No



The case examiners have determined that there is a realistic prospect of regulatory concerns 1, 2 and 3 being found proven, that those concerns could amount to the statutory grounds of adverse physical or mental health in respect of concern 1 and misconduct in respect of concerns 2 and 3, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker you:

1. Have an adverse health condition as set out in Schedule 1 which impacts on your ability to practise as a social worker.

The case examiners have seen a number of different reports in respect of the social worker's health. They note within all the documents the social worker's health history. They note that the health professionals have confirmed that the social worker

Whilst the case examiners have not been presented with a formal diagnosis of [REDACTED] they note the following:

■ The GP letter from April 2022, [REDACTED]

[REDACTED]

■ The social worker's patient records [REDACTED]

[REDACTED]

■ UKIM medical assessment report dated 8 February 2024, [REDACTED]

[REDACTED]

The evidence suggests that whilst the social worker has no formal diagnosis of [REDACTED] that they continue to experience ongoing difficulties with their health as a result of [REDACTED]

The case examiners have therefore gone on to consider whether the social worker's health has the ability to impact upon their practice.

The case examiners consider the following to be key to their decision making:

- A meeting dated 15 September 2021, to discuss the social worker's redeployment to another team. Within this meeting, it states, '*no social worker role would be appropriate for [social worker] at this time*'.
- The occupation health report dated 17 February 2022 which states that the social worker '*does not meet the medical fitness for social work*'.

- An email from Portsmouth Council dated 15 June 2023 stating that the manager made the decision to *'not continue to use [social worker] because they were unable to pick up the work quickly and required guidance and oversight'*. The issues raised, included being very slow to write up visits, [REDACTED] that they took a long time to get to places and updated some chronologies which were inadequate as they were lacking information, and on one the information related to another person.
- An email from Hampshire New Forrest dated 28 June 2023, which stated that the social worker was with the team for 6 working days, however concerns were raised about the social worker's health in that period. The social worker reported [REDACTED] and sought medical advice and did not return to the team. The observation of the team manager during the social worker's employment were that the social worker presented as struggling with their health [REDACTED] They also noted that the social worker left the role without notice on health grounds.
- The UKIM assessment that states. *'....Munyaradzi Nhundu is not medically fit to undertake any social work.'*

Considering all of the above, the evidence suggests that the social worker's health has impacted, and continues to impact upon, their ability to carry out their professional role.

The case examiners note that the social worker disputes the findings of the occupational health report written in February 2022 and in their initial submissions, they did not accept this regulatory concern. In their final submissions, it is unclear whether they accept this regulatory concern.

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

2. Between 2021 to 2022 applied for work as a social worker despite being aware of concerns about your ability to practise safely due to your health.

As outlined in the case examiners reasoning for regulatory concern 1, an occupational health report from 18 February 2022 concluded that the social worker did not meet the required level of medical fitness for social work.

The evidence suggests that the social worker handed in their notice with their employer on 16 February 2002 and their last day of employment was 28 February 2022. The social worker was reported to be challenging the findings of the occupational health report.

The case examiners have seen an email from Portsmouth Council dated 15 June 2023, which confirmed that the social worker was employed for 5 weeks from 17 October 2022 to 11 November 2022. The employer has stated that *'regarding their health, I knew he had [REDACTED] ut other than when they fell asleep, I did not see any other indication that this might be a problem'*.

The case examiners have seen an email from Hampshire New Forrest dated 28 June 2023, which confirmed the social worker worked for the authority between 28 February 2022 to 7 March 2022. The employer confirmed that upon starting the social worker had said that they were recovering from an illness [REDACTED] however the social worker left after 6 working days without notice on health grounds.

The evidence suggests that despite being aware of the outcome of the occupational health report and concerns about their fitness to practise as a social worker, the social worker sought and worked in social work roles. Furthermore, the evidence suggests that they did not make their employers fully aware of the extent of their health and how this may impact upon their fitness to practise.

In their initial submissions to the regulator, the social worker did not accept this concern. In their final submissions, it is unclear as to whether the social worker accepts this concern.

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

3. Between 2021 to 2022 did not make a declaration to the regulator regarding occupational health reports as agreed.

The case examiners have seen the initial referral from the social worker's former employer dated 1 March 2022. Within the referral, they state that a senior manager had a meeting with the social worker on 23 February 2022 where they shared advice with the social worker that they had received from the regulator, namely that the social worker had a duty to inform the regulator of the occupational health report and its conclusions. During the same meeting, the senior manager advised the social worker that if they did not do this, then there was an obligation on the employer to inform the regulator of the occupational health report. The manager advised the social worker that they needed to do this by 28 February 2022, which was to be their last day of employment and they asked for evidence of this. The manager advised that the social worker agreed to do this. However, the manager stated that at the time of writing the referral, they had not seen evidence of the social worker informing the regulator of the occupational report and hence they had included this in their referral.

The case examiners note the case investigation report prepared by the regulator for this case. The case investigation report states that no referral was made to the regulator by the social worker.

Whilst the case examiners have not been provided any further information, they consider the report from the regulator along with the referral suggest that the regulator only became aware of the occupational health reports as a result of the employer sharing these.

In their initial submissions to the regulator, the social worker did not accept this concern. In their final submissions, it is unclear as to whether the social worker accepts this concern.

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

Grounds

The matters are being presented on two grounds, adverse physical or mental health and misconduct. The case examiners will consider each in turn.

Adverse physical or mental health

As outlined in the facts section of this decision, the case examiners have determined that the social worker has the health conditions as set out in Schedule 1 and that these conditions have the ability to impact upon their fitness to practise.

As such, the case examiners are satisfied that adjudicators would determine that this meets the statutory ground for adverse mental or physical health.

Misconduct

The case examiners are aware that there is no statutory definition of misconduct, but it generally would consist of serious acts or omissions, which suggest a significant departure from what would be expected of the social worker in the circumstances. This can include conduct that takes place in the exercise of professional practice, and also conduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

To help them decide if the evidence suggests a significant departure from what would be expected in the circumstances, the case examiners have considered the following standards, which were applicable at the time of the concerns, namely Social Work England professional standards (2019).

As a social worker, I will:

6.6 Declare to the appropriate authority and Social Work England anything that might affect my ability to do my job competently or may affect my fitness to practise, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.

The case examiners are aware that falling short of the standards may not always amount to misconduct. However, adjudicators in this instance may determine that the threshold for misconduct has been reached. The case examiners have provided commentary in their assessment of the facts, explaining why the evidence suggests the social worker did not do what was expected of them by not alerting Social Work England of their current health concerns and the outcome of an occupational health report. Furthermore, they continued to seek employment and did not alert their new employers of the concerns raised about their health.

The case examiners consider that an employer would be considered an appropriate authority. As they are employing the social worker, they have a responsibility to both the social worker and the public with whom the social worker will be working, to conduct relevant risk assessments and ensure that any reasonable adjustments are in place to support the social worker to conduct their role safely. The failure of the social worker to inform their employers of their health condition and the outcome of the occupational health report means that any risks were unable to be mitigated. This would not align with Social Work England standard 6.6.

It is important that social workers also refer such matters to the regulator at the earliest opportunity, so that the regulator can carry out an assessment of risk and fulfil its overarching objective of protecting the public. As the evidence suggests the social worker did not do so, this means that the regulator was prevented from taking prompt steps to mitigate any risks that may have existed. The alleged conduct would not align with standard 6.6.

If the matters were to be found proven, the case examiners conclude the alleged conduct is serious, and is likely to suggest a significant departure from the professional standards detailed above.

As such, the case examiners are satisfied there is a realistic prospect of adjudicators finding concerns 2, and 3 amount to the statutory ground of misconduct.

Impairment

Personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test for personal impairment as set out in the case examiner guidance (2022), namely whether the conduct is remediable; whether the social worker has undergone remediation

and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated. The case examiners have also considered the health guidance and whether the social worker has demonstrated insight in line with this guidance (December 2022).

Adverse mental or physical health

The case examiners consider that the social worker has no insight into their health conditions as outlined in Schedule 1. The case examiners note in the reasoning at the facts stage, that the social worker continues to dispute the findings of the occupational health report written in February 2022. In the UKIM assessment, the social worker has stated that they would like to work as a social worker. Furthermore, in their most recent submissions, they state that, *'for an occupational therapist to conclude that I am not fit to be a social worker is disrespectful and unethical'* and *'I am ready to work with reasonable adjustments to my practice, so that I would perform safely with support'* and *'I feel I have the energy, to do all my duties without endangering the children, and parents'*.

The case examiners are of the view that despite being presented with a number of reports from different health professionals regarding their health, the social worker appears to continue to lack insight into their health conditions.

Whilst the social worker has recognised that they may need support to manage their health, their insight into how this impacts upon their fitness to practise is limited.

The case examiners consider there is a risk of repetition.

Misconduct

The case examiners are of the view that the conduct alleged is inherently linked to the social worker's health condition.

The case examiners consider that due to the lack of insight into their health condition, the social worker appears to lack understanding of the necessity to inform both future employers and their regulator as to their current health condition. The case examiners consider that they have shown no insight into their alleged misconduct and have not taken any steps to remediate.

The social worker has not practised as a social worker since the alleged conduct and has stated that they are able to manage their health with support. The social worker therefore does not appear to see the need to inform prospective employers or the regulator as to health professionals conclusions in respect of their health.

The case examiners are of the view that the social worker's health conditions appear to be ongoing and unlikely to change. Due to their lack of insight, the case examiners consider that there is a risk of repetition.

Public element of impairment

The case examiners next considered whether the social worker's 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 have reminded themselves that the public interest includes responding proportionately to regulatory concerns. However, they consider that the adjudicators may determine that a member of the public, who was fully aware of the circumstances of this case, would be concerned about the social worker's ability to practice without restriction. They may consider that the social worker needs support to enter back into the social work profession to practise safely and to manage their health condition.

Failure by the regulator to provide these restrictions has the potential to seriously undermine public trust in social workers and to damage the reputation of the profession.

The case examiners are of the view that in these circumstances, members of the public would expect a finding of impairment.

Accordingly, the case examiners are satisfied that there is a realistic prospect of 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	☐
Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers?	Yes	☒
	No	☐

Additional reasoning

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:

- The case examiners guidance reminds them that ‘wherever possible and appropriate, case examiners will seek to resolve cases through accepted disposal. This is quicker and more efficient than preparing and presenting a case to a fitness to practise panel’.
- While the social worker appears to dispute the facts of the regulatory concerns in their initial submissions, it is unclear in their final submissions whether they accept the key facts. The case examiners are of the view that the social worker should be afforded the opportunity of an accepted disposal proposal to consider the case examiners’ assessment of the evidence presented to them and reflect on whether they do accept their findings in relation to the facts.
- The case examiners are aware that a case cannot be concluded through an accepted disposal process where a social worker does not accept the facts and agree that they are currently impaired. At this stage, the case examiners’ proposal for an

accepted disposal process does not mark the conclusion of the case, as that would require a response from the social worker for the case examiners' consideration, and is also subject to a final review of the case by the case examiners, who may determine to send the matter to a hearing following any response received.

- It is unclear whether the social worker accepts that their conduct is impaired as the social worker has not commented upon this.
- The accepted disposal process will provide the social worker an opportunity to review the case examiner's 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 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.

Interim order

An interim suspension order is already in effect.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☒
	Removal order	☐
Proposed duration	18 months	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions guidance (December 2022) and reminded themselves that the purpose of sanctions 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 are of the view the social worker's impairment continues to pose some current risk to public safety as there is insufficient evidence at this time of the social worker having developed full insight into their health conditions. Given this, outcomes of no further action, advice, or warnings are considered inappropriate on the basis that these will not sufficiently protect the public.

The case examiners next considered a conditions of practice order being imposed on the social worker's registration. The case examiners note the medical advice from two medical professionals that the social worker is not currently fit to practise, however they note that the social worker is disputing this. The case examiners did consider formulating conditions that would provide a supportive framework to the social worker, if they were able to successfully challenge this and then re-enter the profession at that time. However, the case examiners were of the view that any conditions they could formulate at this time to protect the public, would be tantamount to suspension. The case examiners are of the view that

they are unable to formulate conditions that are workable, proportionate but sufficient to protect the public.

The case examiners then went on to consider the next available sanction, namely a suspension order. The case examiners consider that this would be the most appropriate sanction in this case. Whilst there is a risk that the suspension order may risk deskilling the social worker, the evidence before the case examiners currently is that the social worker is not fit to practise as a social worker due to their health conditions and that they lack insight into their health condition and the impact that this has on their practice. The evidence suggests that the social worker is keen to return to practice, despite their lack of current insight into their health condition. Therefore, a suspension order will allow the social worker the space to concentrate on their health and develop their insight into how this may impact upon them. Furthermore, it will allow the social worker additional time to challenge any health reports which they feel are inaccurate.

In terms of duration, the sanctions guidance states that a suspension order can be imposed for up to three years at a time. When considering the timescale for the suspension, the case examiners have determined that a period of 18 months would be appropriate in this case. This period would allow the social worker to concentrate on their health, consider how their health impacts upon their practice and challenge any health reports which they feel are inaccurate. The case examiners consider a longer period unnecessary and disproportionate at this stage.

The case examiners will notify the social worker of their proposals in respect of a suspension order and seek the social worker's agreement to dispose of the matter accordingly. Should the social worker 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.

The case examiners will give the social worker 21 days to respond to the offer of an accepted disposal. 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.

Recommendations for the social worker

The case examiners make the following recommendations to the social worker, which they consider would assist any future panel when they are reviewing this order.

- As noted in the preliminary section of this decision, the UKIM assessor considered that a [REDACTED] assessment may assist the social worker. It may be the

case that the social worker is able to obtain this without incurring costs to themselves. The social worker may wish to consider exploring this.

- To provide any up to date information or reports relating to their health conditions.
- To complete a reflective piece upon how their health impacts upon their fitness to practise.

Response from the social worker

The social worker responded on 29 April 2024 and confirmed that they had read and understood the terms of the proposed disposal and they accepted the proposal in full.

Case examiners' response and final decision

The case examiners were satisfied that the social worker had read and accepted the proposed disposal of a suspension order in full.

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 can be fulfilled through the accepted disposal process.

The case examiners therefore direct that Social Work England implement a suspension order for a duration of 18 months.

The case examiners note that there is an interim order currently in effect, which will be revoked upon enactment of the agreed order.