



Case Examiner Decision

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FTP-71093

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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	1 September 2023
	Accepted disposal proposed - warning order (5 years)
Final outcome	27 September 2023
	Accepted disposal - warning order (5 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concern 1 being found proven by the adjudicators. There is no realistic prospect of regulatory concerns 2, 3, 4, 5, 6 or 7 being found proven by the adjudicators, and these concerns have therefore been closed at the facts stage.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory grounds of misconduct.
3. For regulatory concern 1, 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 warning order of 5 years duration. The social worker returned a completed accepted disposal response form, signed and dated 25 September 2023, confirming their acceptance of 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.

Anonymity and redaction

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

In accordance with Social Work England's fitness to practise proceedings and registration appeals publications policy, the case examiners have anonymised the names of individuals to maintain privacy. A schedule of anonymity is provided below for the social worker and complainant, and will be redacted if this decision is published.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, [REDACTED]
Date the complaint was received	Letter of complaint dated 12 April 2019, received by the Health and Care Professions Council on 13 May 2019
Complaint summary	The complainant reported concerns relating to professional boundaries, record keeping, legitimacy of mileage claims, and the provision of supervision to foster carers.

Regulatory concerns and concerns recommended for closure

1. You failed to maintain professional boundaries in that you borrowed money from foster carer, Person A



Your conduct in regulatory concerns 1 to 7 amounts to misconduct.

Your fitness to practise is impaired by reason of your misconduct.

Concerns recommended for closure

Concerns being recommended for closure are concerns raised by the complainant, for which no evidence has been found during the investigative process or where the evidence obtained negates the concern(s).

Investigators have recommended the closure of concerns 3 to 7.

Decisions regarding concerns being recommended for closure remain the remit of the case examiners.

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

Concerns 3 to 7 have been recommended for closure by investigators.

In accordance with case examiner guidance, the case examiners will apply the realistic prospect test to those concerns. They have also considered whether there is a realistic prospect of any further evidence being obtained in support of the concerns and noted that the regulator has made a number of requests for evidence from the complainant over a prolonged period of time.

The case examiners are satisfied that appropriate efforts have been made to obtain evidence, and that there is limited prospect of anything further being made available.

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 concern 1 only being found proven, that it could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. You failed to maintain professional boundaries in that you borrowed money from foster carer, Person A

The case examiners have had sight of statements provided by Person A to both the social worker's former employer and the regulator. Within a handwritten statement, dated 4 January 2019, Person A describes having loaned the social worker £2500 towards a house/flat deposit, which it was agreed would be returned. They later found out that the social worker apparently needed £1800, at which point they report that they told the social worker they 'had to have it back.'

The case examiners note that within Person A's statement to the regulator, they state that, although they could not remember how much the social worker said they would pay back each month, they did state it would be at the end of the month when they got paid.

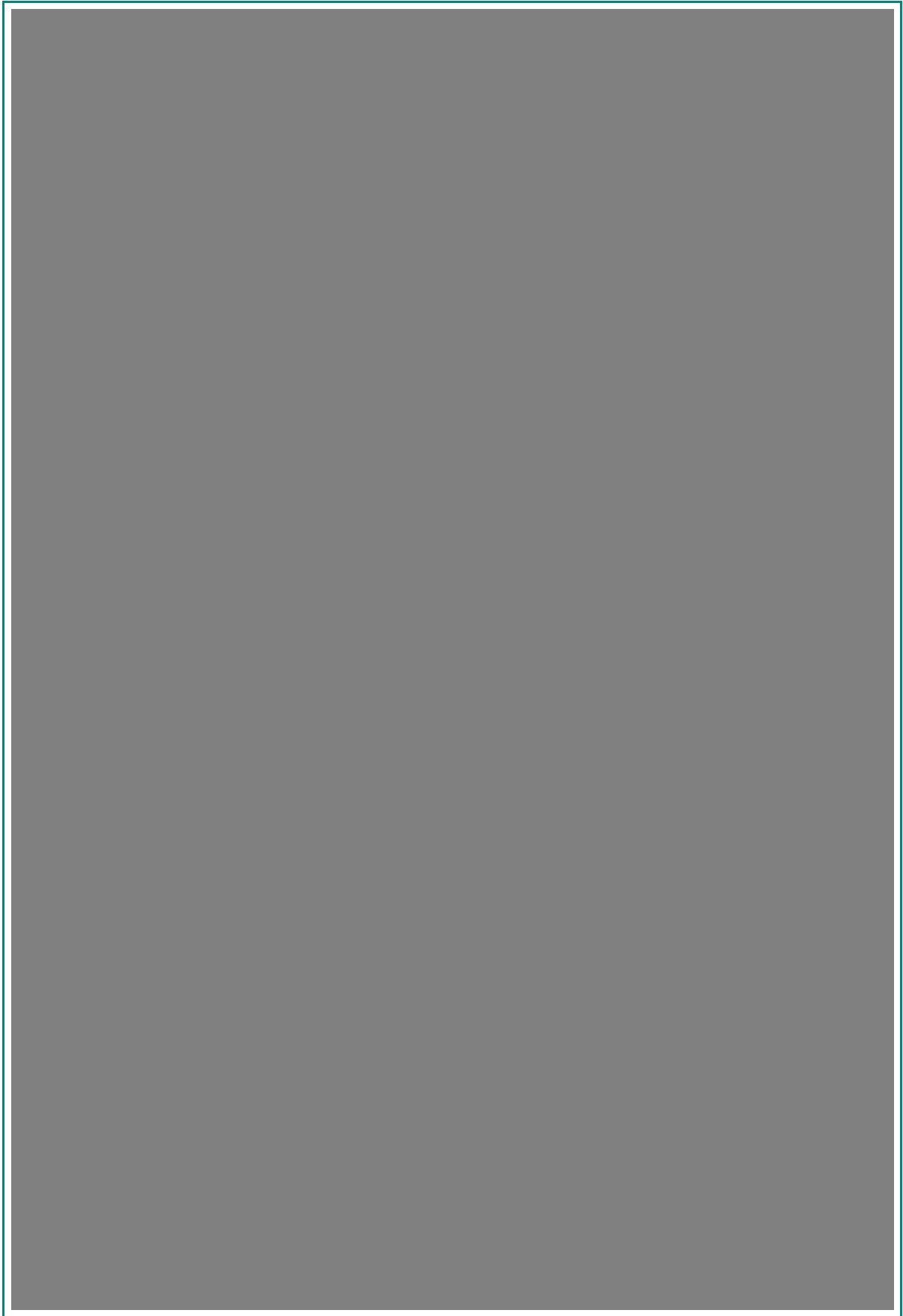
However, they report that the social worker always made excuses as to why the monies could not be repaid.

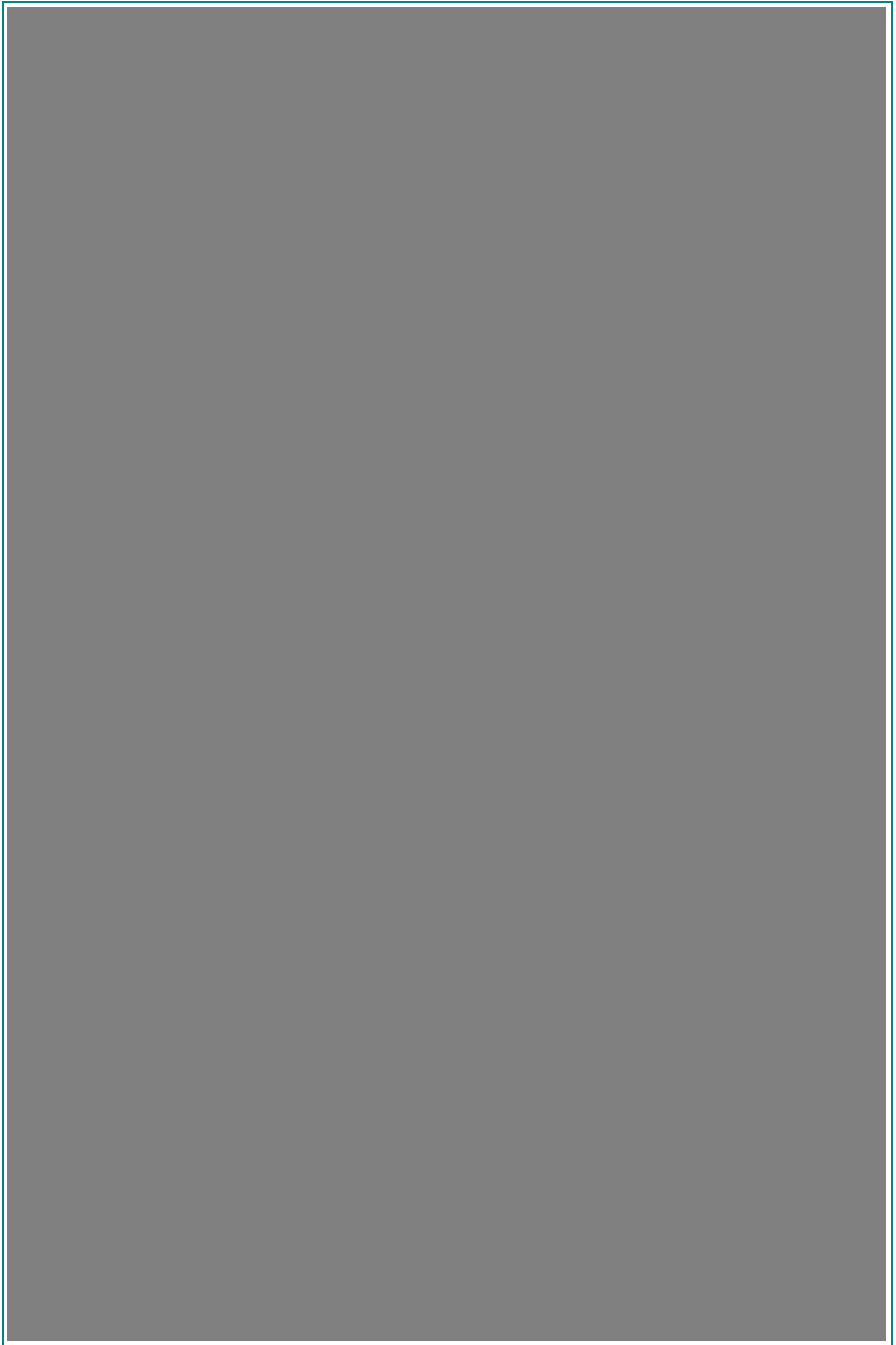
Person A has not been able to provide documentary evidence in respect of the loan, however, the case examiners have noted that the social worker does not dispute that they had borrowed the money, or that it was agreed that it would be repaid.

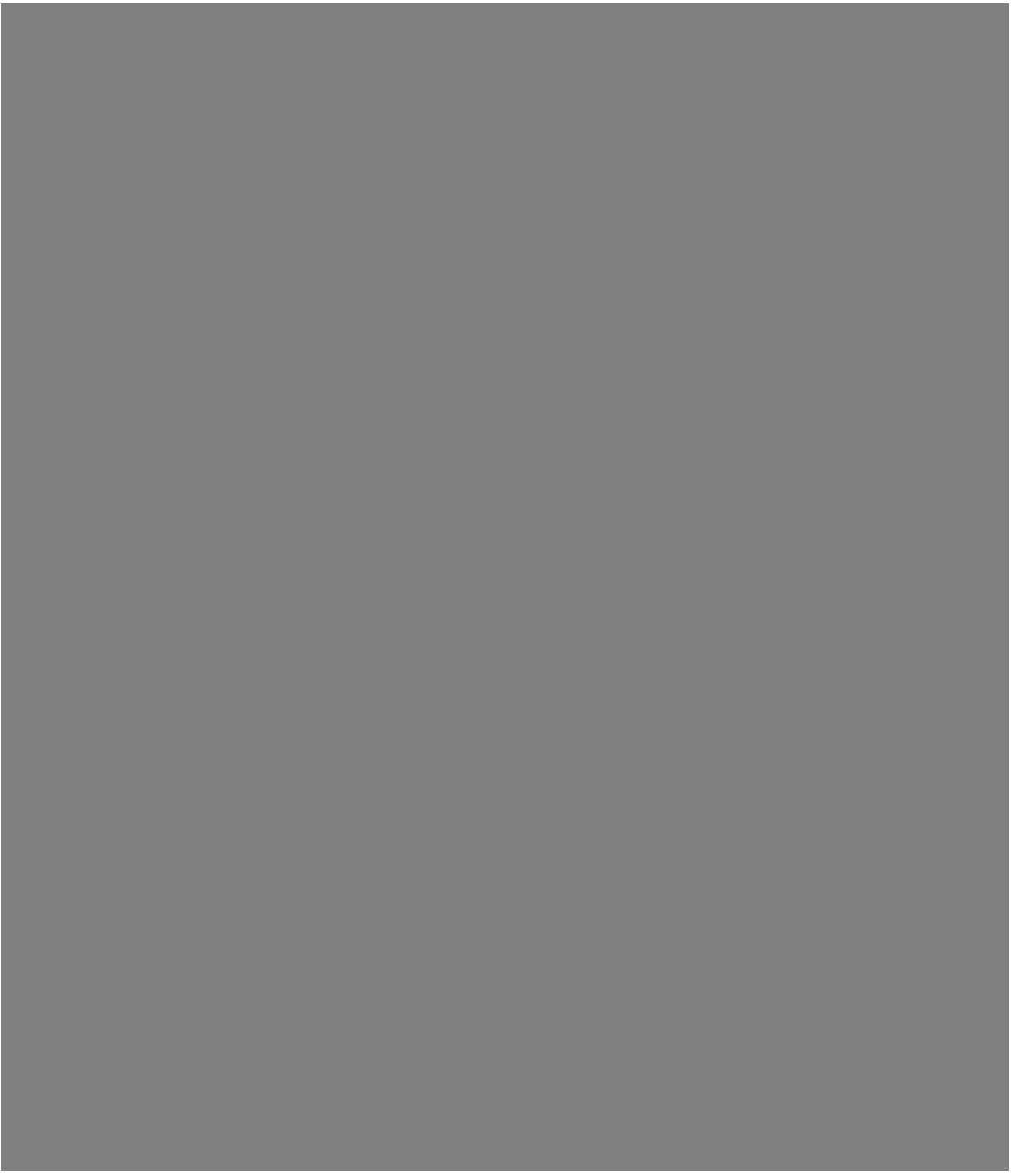
At the time of the loan, the social worker had a professional relationship with Person A, acting as their supervising social worker. The case examiners have had sight of a foster carer supervision agreement, which outlines the social worker's responsibilities in the assessment of foster carers' performance and ensuring that the needs of children placed with them are met. Given this, the case examiners are satisfied that a degree of challenge and oversight was required of the social worker, and that the financial arrangement between them and Person A could reasonably be perceived as representing a conflict of interest.

The case examiners consider that adjudicators may determine that by accepting monies from Person A, even if the intention was to repay the large amount in full, the social worker failed to maintain professional boundaries.

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







Grounds

The case examiners are aware that there is no legal 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.

Health and Care Professions Council – Standards of Conduct, Performance and Ethics (2016)

1. Promote and protect the interests of service users and carers

Maintain appropriate boundaries

1.7 You must keep your relationships with service users and carers professional.

The case examiners are of the view that adjudicators may consider that the conduct, in this case, is sufficiently serious as to represent a significant departure from the standards.

In reaching this conclusion, the case examiners have considered the nature of the social worker's role in supervising Person A, and the importance of the relationship between social worker and foster carer remaining professional. As outlined in local foster carer supervision agreements, the social worker held responsibility for assessing the performance of Person A, and for ensuring that Person A met the needs of children placed with them. By borrowing money from Person A, the social worker generated a significant conflict of interest and, even if this did not lead to actual bias, there will have been an unavoidable perception that the social worker's impartiality is likely to have been undermined.

The case examiners are also mindful of the large amount of money borrowed, and the evidence infers that there was no expectation of immediate repayment. The case examiners note that the evidence suggests that the financial arrangement was not intended to be short-term, and as such, the conflict of interest would persist over a period of time. The case examiners are satisfied that adjudicators would consider this to represent a particularly significant conflict that the social worker could and should have avoided.

In light of the above, there is a realistic prospect of adjudicators determining that the statutory grounds of misconduct are 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, and 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 is highly unlikely.

Whether the conduct can be easily remedied

In respect of regulatory concern 1, the case examiners are satisfied that the conduct could be easily remedied if the social worker were to demonstrate insight into the circumstances relating to the breach of professional boundaries, and the risks that this engaged.

The case examiners have considered whether repayment of the money borrowed might constitute remediation, but they have determined that this would fall outside of the scope of regulatory proceedings. The case examiners were mindful that the social worker no longer has any professional connection to Person A, and, therefore, the loan itself is now a wholly private matter.

Insight and remediation

The case examiners have carefully reviewed the social worker's submissions, both during local investigation and during regulatory proceedings. Having done so, the case examiners are satisfied that the social worker has demonstrated appropriate insight into their breach of professional boundaries. The case examiners note that the social worker admitted the conduct at the earliest opportunity during local proceedings, and has consistently been open about the financial arrangement with Person A, despite there being no documentary evidence available to confirm it exists.

The social worker has explained in detail the circumstances that led them to accept the loan from Person A, and has been candid about the challenges in their personal life at the time. The case examiners were encouraged to see, however, that the social worker has not sought to excuse their behaviour and has been explicit that they deeply regret their conduct.

The case examiners are also reassured to see that the social worker has demonstrated an understanding of the perception of bias that could arise from the conflict of interest

generated by their actions. The case examiners consider this understanding to be integral to the insight necessary in this matter to reduce the risk of repetition.

The case examiners do not have access to any recent references or testimonials for the social worker, but appreciate that it would not have been possible for any to be provided. The available evidence suggests that the social worker has stepped away from professional practice and not returned since the time of the conduct in question. The social worker has explained that they do not intend to practise again in the future.

Risk of repetition

The case examiners are satisfied that the social worker's insight is sufficiently well-rounded to offer assurance that the conduct will not be repeated. The risk of repetition is, therefore, considered to be low.

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 in this case may be considered to represent a significant departure from the standards. In their view, the public would be concerned to hear that a social worker had entered into a financial agreement with a foster carer, particularly in light of the size of the sum of money loaned.

The case examiners consider that public confidence could be seriously undermined if a finding of impairment was not made, in order to emphasise to the social worker and the profession the importance of maintaining proper professional boundaries. It therefore follows that adjudicators may consider a finding of impairment to be necessary in order to maintain public confidence in the social work profession, and in the maintenance of standards for social workers.

Accordingly, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is currently impaired.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
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' decision making guidance explains that they must refer a case to a public hearing if, in their view, it would be in the public interest to do so. The public interest includes three key limbs:

- protecting, promoting and maintaining the health, safety and wellbeing of the public;
- promoting and maintaining public confidence in social workers in England;
- promoting and maintaining proper professional standards for social workers in England.

In this case, the case examiners have concluded that adjudicators may find the social worker to have demonstrated sufficient insight and remediation to suggest that the risk of repetition is low. The case examiners' assessment of the public interest is, therefore, focused on the second two limbs, which relate to public confidence in social workers, and the promotion and maintenance of professional standards for social workers.

The case examiners are mindful that the social worker has accepted the key facts in this case, and there are no conflicts in evidence that require resolution at a hearing. However, the case examiners have also concluded that the public interest in this case is engaged.

In considering whether a hearing is therefore necessary in the public interest, the case examiners have reminded themselves that their guidance is clear that, in most cases, the public interest can be satisfied by way of an outcome agreed with the social worker and published on the regulator's website. In the case examiners' view, there is no compelling reason to depart from the guidance in this case.

Accordingly, the case examiners consider 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 social workers adhering to the professional standards expected of them.

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☐
Proposed duration	5 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.

In considering a sanction, the case examiners have considered mitigating and aggravating factors in this case:

Mitigating

- The social worker has fully accepted the facts at regulatory concern 1.
- The social worker has demonstrated good insight, and engaged openly throughout the investigation and fitness to practise process.
- A member of the public is likely to consider the social worker's conduct as unacceptable, but may be reassured by the actions taken by the social worker to reflect on their conduct.

Aggravating

- The conflict of interest generated by the social worker's conduct was prolonged, which would exacerbate the level of risk to the reputation of the social worker and the profession.

The case examiners determine 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 would fail to safeguard the wider public interest.

The case examiners have 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 went on to consider a warning order, which would provide a clearer expression of disapproval of the social worker's conduct than an advice order. The case examiners conclude that a warning order is the most appropriate and proportionate outcome in this case and represents the minimum sanction necessary to adequately address the public's confidence in the profession.

In reaching this conclusion, the case examiners are satisfied that the issue was isolated and there is a low risk of repetition. There is also no previous adverse history. Therefore, the case examiners consider that restrictive sanction is not required in order to secure the safety of the public. Instead, the primary purpose of any outcome would be to safeguard public confidence, and to remind the social worker and the profession of the professional standards.

The case examiners gave serious consideration to whether a suspension order might be necessary, in order to mark the serious nature of the conduct in question. However, on balance, they considered that although the conduct is serious, it would fall marginally short of the threshold needed for the social worker to be suspended from the register. A suspension order would therefore be disproportionate.

The case examiners therefore moved on to consider the length of the warning order, with reference to the regulator's sanctions guidance. Warning orders can be imposed for 1, 3 or 5 years. The case examiners are satisfied that in this case, a 1 or a 3 year warning order would be insufficient to mark the severity of the conduct in question. In reaching this conclusion, they reminded themselves that they had given serious consideration to a suspension order, before determining that the severity of the conduct fell marginally short of such a high sanction. The case examiners referred to the sanctions guidance on this point, which states that a 5 year warning order may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice.

The case examiners are assured that such an order would adequately maintain public confidence and serve as a clear reminder of the professional standards expected of all social workers.

The case examiners have decided to propose to the social worker a warning order of 5 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 represented a serious breach of professional boundaries, and had the potential to have an adverse impact on public confidence in the social work profession.

The case examiners warn that as a social worker, it is of paramount importance that you conduct yourself professionally, and recognise where conduct could generate conflicts of interest. The case examiners remind the social worker of the following Social Work England professional standards (2019):

As a social worker, I will:

2.3 Maintain professional relationships with people and ensure that they understand the role of a social worker in their lives.

As a social worker, I will not:

5.4 Ask for, or accept any money, gifts or hospitality which may affect or appear to affect my professional judgement.

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.

Response from the social worker

The social worker has returned a completed response form, signed and dated 25 September 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 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 enact a warning order, with a duration of 5 years.