

Case Examiner Decision  
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FTPS-21449

## Contents

|                                                 |    |
|-------------------------------------------------|----|
| The role of the case examiners.....             | 3  |
| Decision summary.....                           | 4  |
| The complaint and our regulatory concerns ..... | 6  |
| Preliminary issues .....                        | 7  |
| The realistic prospect test.....                | 8  |
| The public interest .....                       | 13 |
| Accepted disposal .....                         | 15 |

## 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 | 12 March 2024                                                         |
|                     | Accepted disposal proposed - conditions of practice order (18 months) |
| Final outcome       | 21 May 2024                                                           |
|                     | Accepted disposal - conditions of practice order (18 months)          |

## 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;
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 they determined 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 conditions of practice order of 18 months duration. 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.

In accordance with Social Work England's Fitness to Practise 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.

|          |                                                                        |
|----------|------------------------------------------------------------------------|
| Person A | <span style="background-color: black; color: black;">[REDACTED]</span> |
| Person B |                                                                        |
| Person C |                                                                        |

## The complaint and our regulatory concerns

| The initial complaint           |                                                                                                                                                   |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| The complainant                 | The complaint was raised by a member of the public.                                                                                               |
| Date the complaint was received | 03 October 2022                                                                                                                                   |
| Complaint summary               | The complainant alleges that the social worker breached their confidentiality by sharing personal information without legitimate reason to do so. |

### Regulatory concerns

While registered as a social worker:

1. You failed to handle confidential information in line with the law in that you disclosed confidential information about Person A without a legitimate or professional reason to do so.

Grounds of impairment:

The matters outlined in the regulatory concern amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct.

## Preliminary issues

| Investigation                                                                                                                                                                                                                               |     |                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------|
| Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?                                                                                                                                 | Yes | <input checked="" type="checkbox"/> |
|                                                                                                                                                                                                                                             | No  | <input type="checkbox"/>            |
| Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?                                                                                                | Yes | <input checked="" type="checkbox"/> |
|                                                                                                                                                                                                                                             | No  | <input type="checkbox"/>            |
| 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 | <input checked="" type="checkbox"/> |
|                                                                                                                                                                                                                                             | No  | <input type="checkbox"/>            |
| 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 | <input checked="" type="checkbox"/> |
|                                                                                                                                                                                                                                             | No  | <input type="checkbox"/>            |

## 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 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

#### While registered as a social worker:

- 1. You failed to handle confidential information in line with the law in that you disclosed confidential information about Person A without a legitimate or professional reason to do so.**

The case examiners note that the social worker was, at the time of the concern, the allocated social worker for Person A's child.

The case examiners note that the time period being considered for the regulatory concern is September 2022. During that month, it is documented Person A's child had absconded from school on 22 September 2022 and subsequently was reported as missing to the social worker. The social worker also alleges that the child was reported as missing on 29 September 2022.

The complainant alleges that the social worker shared confidential health information with who the social worker believed to be the complainant's employer. The complainant states the social worker had no consent, legitimate or professional reason to share this information.

The social worker was aware that Person A had mental health issues. This information was known to the social worker through information gathered as part of social care involvement with Person A's child.

Confidential information, shared with a social worker, as part of their job role, is subject to organisational policy and procedure, which in turn is in line with the legal framework for data protection. This information should not be shared without express consent or if there is a legitimate reason to do so, grounded in law.

The social worker accepts that they made a telephone call to who they believed to be Person A's employer. The social worker states they had permission to contact Person A at their place of work as an emergency contact for matters relating to Person A's child. The social worker states the call made was in response to Person A's child being reported as missing.

The complainant explains that whilst the social worker's call was made to their place of work they were not employed directly by the person who the social worker spoke to.

The social worker accepts that during the telephone call, to who they believed to be Person A's employer, they disclosed in conversation Person A had mental health issues. The case examiners have not been presented with any evidence which would suggest that the social worker had consent from Person A to disclose this confidential health information.

Person B has confirmed, during the investigation, that they were the first person the social worker spoke to at Person A's work place. Person B gave a witness account to the regulator as part of their investigation and confirmed that they spoke to the social worker in September 2022. They said a further call was received from the social worker and provided a hand written note purported to have been taken at the time of the call by Person C. Within the handwritten note there is reference to Person A's mental health issues.

Person B states that they spoke with Person A, in the presence of Person C following the call with the social worker and discussed the health information that was shared. This is confirmed by Person A.

The case examiners note information provided by the social worker's former employer. In a letter dated 09 November 2022, to the social worker, following a 'safeguarding meeting'

the former employer set out that internally the data breach had been deemed serious and was to be reported to the Information Commissioners Office (ICO). The former employer, within the letter, state: *'I am satisfied that should you have remained in employment the decision to not confirm your probation would have been the correct course of action to take.'*

The former employer confirmed that the social worker had, prior to the issue of concern, completed appropriate training in respect of information governance.

The case examiners have not been presented with any information which would suggest that the social worker had consent, legitimate or professional reason to share Person A's health information. The social worker may have therefore failed to handle confidential information in line with the law.

**Having considered the evidence available to them the case examiners are satisfied that there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.**

### 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.

#### Social Work England: Professional Standards (2019)

##### ***Establish and maintain the trust and confidence of people***

***As a social worker, I will:***

***2.6 Treat information about people with sensitivity and handle confidential information in line with the law.***

##### ***Be accountable for the quality of my practice and the decisions I make***

***As a social worker, I will:***

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

Social workers are entrusted with access to highly sensitive data, and it is essential that the public can trust that this information will only be shared when a social worker has legitimate, professional reason to do so. Accordingly, it is a serious departure from the standards, for a social worker to share such information without professional reason or authorisation.

This concern, if found proven, is particularly serious as it is alleged that the social worker shared Person A's confidential health information with a person unknown to them, outside of any professional network and without consent from Person A. From the information provided to the case examiners the information was shared without legitimate or professional reason, and outside of the law, for which the social worker had completed all appropriate training.

If found proven, the social worker misused confidential information which was available to them in a professional capacity, and did not manage the information within the appropriate legal framework or engage processes available to them, e.g. Local Authority Designated Officer (LADO).

**Having considered the evidence the case examiners are satisfied there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.**

### Impairment

Assessment of impairment consists of two elements:

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

### Personal element

With regards to the concerns before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration to whether the matters before the regulator are easily remediable, and whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition is highly unlikely.

### Whether the conduct can be easily remedied

The case examiners do consider that the alleged conduct is remediable by the social worker, for example through training in relation to data protection and insight and

reflection on their conduct, together with a consideration of how they might respond differently in future.

#### Insight and remediation

The case examiners note that the social worker states they have completed training with regards to data protection. Whilst this training has a direct link to the regulatory concern, the case examiners do not consider the concern can be wholly explained by a lack of knowledge as the social worker had completed information governance training prior to the concern. The case examiners note that the social worker was undertaking their Assessed and Supported Year in Employment (ASYE) when the concern was raised, however, suggest this should have increased the social worker's caution over sharing confidential information without explicit managerial guidance.

Whilst the social worker has accepted that they shared confidential information, it is not clear, within their submissions to the regulator, whether they fully accept that their actions were wrong and what they would do differently in the future.

The social worker has provided lengthy reflections but the case examiners do not consider that they get the crux of the concern which is that confidential information was shared without authority, outside of legal frameworks.

#### Risk of repetition

Given the social worker's limited remediation, developing insight and lack of strategies to manage future risk, albeit with a positive reference from their current employer, the case examiners consider that the risk of repetition remains.

#### **Public element**

The case examiners have next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers.

Regulatory concerns regarding breaching confidentiality go to the heart of public confidence in the social work profession. They have the potential to undermine the public's trust in social workers. As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in regulation of the profession.

**Having considered both the personal and public elements, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker to be currently impaired.**

## The public interest

### Decision summary

|                                                                |     |                                     |
|----------------------------------------------------------------|-----|-------------------------------------|
| Is there a public interest in referring the case to a hearing? | Yes | <input type="checkbox"/>            |
|                                                                | No  | <input checked="" type="checkbox"/> |

### Referral criteria

|                                                                                                                                        |     |                                     |
|----------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------|
| Is there a conflict in the evidence that must be resolved at a hearing?                                                                | Yes | <input type="checkbox"/>            |
|                                                                                                                                        | No  | <input checked="" type="checkbox"/> |
| Does the social worker dispute any or all of the key facts of the case?                                                                | Yes | <input checked="" type="checkbox"/> |
|                                                                                                                                        | No  | <input type="checkbox"/>            |
| Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers? | Yes | <input type="checkbox"/>            |
|                                                                                                                                        | No  | <input checked="" type="checkbox"/> |

### Additional reasoning

The case examiners note that in the social worker's final submissions to the regulator, they have marked that they do not accept the regulatory concern. This however is in conflict with the information provided by the social worker; they accept that they made a call to Person A's workplace and spoke to a person unknown to them about Person A having mental health issues. This information was confidential to Person A and the case examiners have not identified any legitimate reason for the social worker to share this health information with the workplace. The accepted disposal process will provide the social worker an opportunity to review the case examiners' reasoning and reflect on whether they do accept the facts of the case. It is open to the social worker to reject any accepted disposal proposal and request a hearing.

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

- While the social worker does not accept that their conduct is impaired, 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 the sanctions available to them.
- The case examiners are 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            | <input type="checkbox"/>            |
|                   | Advice                       | <input type="checkbox"/>            |
|                   | Warning order                | <input type="checkbox"/>            |
|                   | Conditions of practice order | <input checked="" type="checkbox"/> |
|                   | Suspension order             | <input type="checkbox"/>            |
|                   | Removal order                | <input type="checkbox"/>            |
| Proposed duration | 18 months                    |                                     |

### Reasoning

Having found that a realistic prospect the social worker's fitness to practise is currently impaired, the case examiners then considered what, if any, sanction they should propose in this case. The case examiners have taken into account the Sanctions Guidance published by Social Work England. They are reminded that a sanction is not intended to be punitive but may have a punitive effect and have borne in mind the principle of proportionality and fairness in determining the appropriate sanction.

The case examiners are also mindful that the purpose of any sanction is to protect the public which includes maintaining public confidence in the profession and Social Work England as its regulator, and upholding proper standards of conduct and behaviour.

The case examiners have taken into account the principle of proportionality by weighing the social worker's interests with the public interest when considering each available sanction in ascending order of severity.

In determining the most appropriate and proportionate outcome in this case, the case examiners have considered the available options in ascending order of seriousness.

#### No Further Action

The case examiners conclude that the nature and seriousness of the social worker's alleged conduct has not been remediated. In the absence of exceptional circumstances, it would be inappropriate to take no further action. Furthermore, it would be insufficient to

protect the public, maintain public confidence and uphold the reputation of the profession.

#### Advice or Warning

The case examiners have then considered whether to issue advice or a warning. They note that neither of these sanctions would restrict the social worker's ability to practise and, therefore, it is not appropriate where there is a current risk to public safety.

In relation to a warning, the case examiners had regard to paragraph 108 of the guidance, which reads:

A warning order is likely to be appropriate where (all of the following):

- The fitness to practise issues is isolated or limited
- There is a low risk of repetition
- The social worker has demonstrated insight

The case examiners do not consider that issuing advice or a warning would be sufficient to promote and protect public confidence in the profession. Such sanctions would not restrict the social worker's practice; the case examiners have already identified that the risk of repetition remains.

#### Conditions of Practice Order

The case examiners next considered a conditions of practice order. The case examiners have consulted paragraph 114 of the guidance which states:

Conditions of practice may be appropriate in cases where (all of the following):

- the social worker has demonstrated insight
- the failure or deficiency in practice is capable of being remedied
- appropriate, proportionate, and workable conditions can be put in place
- decision makers are confident the social worker can and will comply with the conditions
- the social worker does not pose a risk of harm to the public by being in restricted practice

Whilst the social worker has not demonstrated full insight, they have shown some reflection on the circumstances of the case that could offer a foundation for further insight and remediation. The case examiners determine that workable conditions can be

formulated that would support the social worker to develop the requisite insight and remediate their practice. In addition, the order is subject to review, and can be extended or replaced with a different order if necessary.

Having concluded that a conditions of practice order is the appropriate outcome in this case, the case examiners went on to consider the length of time for the order.

The case examiners consider that 18 months would allow the social worker sufficient time to demonstrate strengthened practice within a full appraisal cycle.

#### Suspension or Removal Order

The case examiners went on to test the suitability of the conditions of practice order by considering the next most severe sanctions, a suspension order and a removal order. Having considered their guidance the case examiners did not consider these orders to be proportionate. Whilst the regulatory concern was serious the case examiners consider that the public can be protected with a robust conditions of practice order, which has been put forward.

To conclude, the case examiners have proposed a conditions of practice order – 18 months 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 28 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 conditions of practice

Conditions 1 to 17 (inclusive) should be in place for a 18 month period. In accordance with paragraph 15 of Schedule 2 of The Social Workers Regulations 2018, the regulator must review the conditions of practice order before its expiry. The social worker and/or Social Work England can seek early review if new evidence becomes available to suggest the current order needs to be varied, replaced, or removed.

1. You must notify Social Work England within 7 days of any professional appointment you accept or are currently undertaking and provide the contact details of your employer, agency, or any organisation with which you have a contract or arrangement to provide social work services, whether paid or voluntary.

2. You must allow Social Work England to exchange information with your employer, agency, or any organisation with which you have a contract or arrangement to provide social work or educational services, and any reporter or workplace supervisor referred to in these conditions.

3a. At any time you are providing social work services which require you to be registered with Social Work England, you must agree to the appointment of a reporter nominated by you and approved by Social Work England. The reporter must be on Social Work England's register.

3b. You must not start or continue to work until these arrangements have been approved by Social Work England.

4. You must provide reports from your reporter to Social Work England every 6 months and at least 14 days prior to any review.

5. You must work with your reporter to formulate a personal development plan, specifically designed to address the shortfalls in the following areas of your practice:

- Information governance
- Information sharing
- The role of the Local Authority Designated Officer (LADO)
- Managing risk

6. You must provide a copy of your personal development plan to Social Work England within 4 weeks from the date these conditions take effect and an updated copy 4 weeks prior to any review.

7. You must read Social Work England's Professional Standards (2019) and provide a written reflection 4 months after these conditions take effect, focusing on how your conduct, for matters relating to this case, sharing confidential information without consent or authority, was below the accepted standard of a social worker, outlining what you should have done differently.

8. You must keep your professional commitments under review and limit your social work practice in accordance with your reporter's advice.

9. You must not work as an independent social worker.

10. You must not be responsible for the administration and/or management of any independent social work practice/establishment.

11. You must not undertake any agency or locum posts of less than 6 months duration.
12. You must inform Social Work England within 7 days of receiving notice of any formal disciplinary proceedings taken against you from the date these conditions take effect.
13. You must inform Social Work England within 7 days of receiving notice of any investigations or complaints made against you from the date these conditions take effect.
14. You must inform Social Work England if you apply for social work employment / self-employment (paid or voluntary) outside England within 7 days of the date of application.
15. You must inform Social Work England if you are registered or subsequently apply for registration with other UK regulator, overseas regulator, or relevant authority within 7 days of the date of application (for future registration) or 7 days from the date these conditions take effect (for existing registration).
16. You must provide a written copy of your conditions, within 7 days from the date these conditions take effect, to the following parties confirming that your registration is subject to the conditions listed at 1 to 15, above:
  - Any organisation or person employing or contracting with you to undertake social work services whether paid or voluntary.
  - Any locum, agency or out-of-hours service you are registered with or apply to be registered with in order to secure employment or contracts to undertake social work services whether paid or voluntary (at the time of application).
  - Any prospective employer who would be employing or contracting with you to undertake social work services whether paid or voluntary (at the time of application).
  - Any organisation, agency, or employer where you are using your social work qualification/ knowledge/ skills in a non-qualified social work role, whether paid or voluntary.
17. You must permit Social Work England to disclose the above conditions, 1 to 16, to any person requesting information about your registration status.

## Response from the social worker

The social worker returned a completed response form on 15 April 2024, which included the following declaration:

*"I have read the case examiners' decision and the accepted disposal guide. I admit the key facts set out in the case examiner decision, and that my fitness to practise is impaired. I understand the terms of the proposed disposal of my fitness to practise case 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 conditions of practice order, with a duration of 18 months.